

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JENNIFER DORSEY,)
Petitioner,)
v.) Civil No. 2:07CV831-MEF
United States of America,) Crim. No. 2:05CR208-MEF
Respondent.)

UNITED STATES RESPONSE TO DEFENDANT'S §2255 MOTION

COMES NOW the United States of America, by and through its attorney, Leura G. Canary, United States Attorney, and, in compliance with this Court's order, responds to Defendant/Movant Jennifer Dorsey's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, Or Correct Sentence, as follows:

I. PROCEDURAL HISTORY AND RELEVANT FACTS

On September 8, 2005, a grand jury for the Middle District of Alabama returned a three-count indictment against Jennifer Dorsey. See Exhibit A, the indictment. Count One of the indictment charged that on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama and elsewhere, the defendant, JENNIFER DORSEY, did knowingly, intentionally, and unlawfully possess with the intent to distribute approximately 373.4 grams of a mixture and substance containing a detectable amount of amphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1). Count Two charged that on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama

and elsewhere, the defendant, JENNIFER DORSEY, did use and carry a firearm during and in relation to and did possess a firearm in furtherance of, a drug trafficking crime for which she may be prosecuted in a Court of the United States, to-wit: possession with the intent to distribute amphetamine as charged in Count 1 of this indictment, in violation of Title 18, United States Code, Section 924(c)(1)(A). Count Three charged that on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama and elsewhere, the defendant, JENNIFER DORSEY, then being an unlawful user of a controlled substance as defined in 21 U.S.C. §802 did knowingly possess in and affecting commerce a firearm, to-wit: a Taurus .357 caliber revolver, bearing serial number OC41685, in violation of Title 18, United States Code, Section 922(g)(3). Exhibit A.

On May 25, 2006, Dorsey entered into a plea agreement with the United States. Exhibit B, a copy of the plea agreement. As part of the plea agreement, the government agreed to move to dismiss Count Two in the indictment. Exhibit B, at 3. The plea agreement, signed by Dorsey, stated, “Defendant further expressly waives the right to appeal the conviction and sentence on any other ground and waives the right to attack the sentence in any post-conviction proceeding. This waiver does not include the right to appeal on the grounds of ineffective assistance of counsel and prosecutorial misconduct.” Exhibit B, at 5. The plea agreement concluded with a statement that Dorsey understood the plea agreement, that the plea agreement correctly stated the representations made to Dorsey, and that Dorsey was satisfied that she had received competent advice and representation from her counsel . Id. at 12.

The Court conducted Dorsey’s plea hearing on May 25, 2005. Exhibit C,

transcript of plea hearing. At the outset of the hearing, Dorsey was placed under oath. Exhibit C at 4. Dorsey then consented to have her plea taken by a United States Magistrate Judge. Id. at 2. During the plea hearing, the Court asked Dorsey, "Are you fully satisfied with the counsel, representation and advice given to you in this case by your attorney, Mr. Lewis?" Id. at 7. Dorsey responded, "Yes, ma'am." Id. Moreover, later in the plea hearing, the Court questioned Dorsey regarding the collateral attack waiver, saying:

Court: And do you understand that by entering into this plea agreement and entering a plea of guilty, you will have waived, or given up, your right to appeal all—sorry—or to collaterally attack all or part of this sentence?

Dorsey: Yes, ma'am.

Id. at 10.

The United States Probation Office prepared a presentence investigation report (PSI). The PSI stated that on May 7, 2004, agents executed a search warrant at Dorsey's residence. PSI ¶ 9. During the execution of the search warrant, agents seized approximately 410 grams of suspected methamphetamine from Dorsey's bedroom. PSI ¶ 9. Subsequent laboratory tests revealed the substance thought to be methamphetamine, actually was amphetamine. Agents also found a Taurus .357 caliber revolver in the night stand beside Dorsey's bed in her bedroom. Id. The report further attributed two points to Dorsey's base offense level pursuant to U.S.S.G. § 2D1.1(b)(1). PSI at ¶ 17. Dorsey objected to the inclusion of the two point enhancement for possession of the firearm. See Exhibit D, sentencing hearing

transcript at 6.

Dorsey's sentencing hearing was held on September 11, 2006. Exhibit D. Dorsey testified at the sentencing hearing on the issue of the two-point enhancement for possession of the firearm. During her testimony, she admitted that the revolver was in her night stand; that 300 grams of amphetamine was located beside her bed in a shoe box; that scales and marijuana were also located in her bedroom. Exhibit D, at 9-11. The court denied her objection finding that "the two-point enhancement for possession of a firearm in connection with a drug trafficking offense should be and is applied under section 2D1.1(b)(1) of the United States Sentencing Guidelines." Exhibit D, at 21.

The Court found that Dorsey's final offense level was 31, which, when combined with a criminal history category of I, resulted in a guideline imprisonment range of 108 months to 135 months. Id. at 22. The government filed a motion for downward departure pursuant to U.S.S.G. § 5K1.1. Id. at 22. The court granted such motion and reduced Dorsey's offense level to a level 27, which combined with a criminal history category of I, resulted in a guideline range of 70 months to 87 months imprisonment. Id. at 26. After hearing from several character witnesses, the court sentenced Dorsey to term of imprisonment of 70 months. Id. at 38. Judgment was entered in Dorsey's case on September 13, 2006.

Dorsey filed this Motion to Vacate, Set Aside or Correct Sentence on September 14, 2007. On October 16, 2007, this Court entered an order directing the United States to respond to Dorsey's claims. Doc. 7. The Government's response deadline was continued to no later than January 3, 2008. The United States now files this response to the § 2255 motion.

II. CLAIM RAISED IN THE § 2255 MOTION

Dorsey raises two claims in her § 2255 motion, to wit:

- 1) That the Court misapplied the two-point enhancement due to the presence of firearms, pursuant to U.S.S.G. § 2D1.1(b).
- 2) That Dorsey's counsel was ineffective because he failed to explain that, by pleading guilty, Dorsey was giving up her right to appeal.

III. RESPONSE TO CLAIMS FOR RELIEF

A. Dorsey Has Met The One-Year Statute Of Limitations Deadline For The Filing of Claims Under 28 U.S.C. § 2255.

The United States notes at the outset that Dorsey has filed her motion in a timely manner under paragraph six of 28 U.S.C. § 2255, which provides a one-year period of time within which to file a motion under the rule. The applicable provision requires that a movant file her § 2255 motion within one year from "the date on which the judgment of conviction became final." 28 U.S.C. § 2255(1).

The judgment against Dorsey was entered on September 11, 2006. She did not appeal her conviction or sentence to the Eleventh Circuit Court of Appeals. Thus, her sentence became final when the time for filing an appeal to the Eleventh Circuit expired. Although not specifically addressing the application of the statute of limitations to the 10-day notice of appeal requirement, the Eleventh Circuit has held that a judgment of conviction becomes final for someone who appeals to an appellate court when the time for seeking certiorari review in the Supreme Court expires. See Kaufman v. United States, 282 F.3d 1336, 1337-39 (11th Cir.2002). Likewise, a judgment of conviction

becomes final for someone who does not appeal when the time for seeking that appeal expires. Dorsey had ten days from the September 11, 2006 entry of judgment by this Court to seek review by the Eleventh Circuit; her judgment of sentence, therefore, became final on September 21, 2006. Therefore, under § 2255, Dorsey had until September 21, 2007 to file her motion. Her filing of this § 2255 motion on September 14, 2007 is within one year, and her motion is therefore timely.

B. Dorsey's Petition Is Barred Because She Waived Her Right to Seek Relief Under 28 U.S.C. § 2255 When She Entered Her Guilty Plea.

The Eleventh Circuit views Dorsey's waiver of her right to seek relief under § 2255 as a contract between the United States and a criminal defendant. The Court has stated that among the considerations that a defendant may offer as part of such a contract is waiver of her right to appeal, provided that the waiver is made knowingly and voluntarily. See United States v. Bushert, 997 F.2d 1343, 1350 (11th Cir.1993). In this case, [the appellant's] waiver was clearly knowing and voluntary. The magistrate judge specifically questioned Dorsey regarding her waiver of her right to appeal. See United States v. Buchanan, 131 F.3d 1005, 1008 (11th Cir.1997). The plea agreement is therefore enforceable and would appear to bar this appeal. United States v. Howle, 166 F.3d 1166, 1168 (11th Cir. 1999).

The Eleventh Circuit has also stated that "a waiver of the right to seek federal habeas review must be 'an intentional relinquishment or abandonment of a known right,' the right to federal habeas review." Allen v. Thomas, 161 F.3d 667, 670 (11th Cir. 1998). The record demonstrates that the Court ascertained that Dorsey's assent to the terms of her plea agreement was knowing and voluntary. Exhibit C at 14. Dorsey's §

2255 motion is thus procedurally barred from review by this Court.

C. Dorsey's Claims Are Procedurally Defaulted And Not Properly Considered In This § 2255 Proceeding Because They Could Have Been Raised On Direct Appeal, But Were Not, And Dorsey Has Failed To Demonstrate Cause And Prejudice To Overcome These Defaults.

Dorsey's assertion that she should not have received the two-point enhancement for possessing a firearm is barred from this Court's review because it could have been, but was not, raised on direct appeal. Because Dorsey did not raise this claim on direct appeal, it is barred in this collateral proceeding, unless she can show cause and prejudice to overcome the procedural bar. A motion under § 2255 cannot be used as a substitute for appeal, Burke v. United States, 152 F.3d 1329, 1331 (11th Cir. 1998), and claims not raised on direct appeal that could have been are generally barred from review in § 2255 proceedings, McCoy v. United States, 266 F.3d 1245, 1258 (11th Cir. 2001). In Mills v. United States, 36 F.3d 1052 (11th Cir. 1994), the Eleventh Circuit succinctly summarized the law concerning procedural default as follows:

Generally speaking, an available challenge to a criminal conviction or sentence must be advanced on direct appeal or else it will be considered procedurally barred in a [Section] 2255 proceeding.... A ground of error is usually "available" on direct appeal when its merits can be reviewed without further factual development.... When a defendant fails to pursue an available claim on direct appeal, it will not be considered in a motion for [Section] 2255 relief unless he can establish cause for the default and actual prejudice resulting from the alleged error.... Alternatively, under the fundamental miscarriage of justice exception, "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default....

Id. at 1055-56 (internal citations omitted). See also McCoy v. United States, 266 F.3d at 1258 (“A claim not raised on direct appeal is procedurally defaulted unless the petitioner can establish cause and prejudice for his failure to assert his claims on direct appeal.”). The burden of demonstrating cause and prejudice or a miscarriage of justice is on the movant. See, e.g., Bousley v. United States, 523 U.S. 614, 622 (1998) (“Where a defendant has procedurally defaulted a claim by failing to raise it on direct review, the claim may be raised in habeas only if the defendant can first demonstrate either ‘cause’ and actual ‘prejudice,’... or that he is ‘actually innocent[.]’ ”).

Dorsey has offered nothing to this Court to support a cause and prejudice or miscarriage of justice argument to overcome her procedural defaults. Therefore, her claim should be dismissed on procedural grounds.

D. Dorsey’s Legal Claim Is Without Merit.

In the event this Court does not apply the procedural bar due to Dorsey’s waiver of her right to file a § 2255 motion, or her failure to raise her claim on direct appeal, the United States addresses her claim of legal error in her sentence. “A hearing is not required on patently frivolous claims or those which are based upon unsupported generalizations.” Stephens v. United States, 14 F.Supp.2d 1322, 1334 (N.D. Ga. 1998), quoting United States v. Guerra, 588 F.2d 519, 520-21 (5th Cir.1979). “[I]n this circuit, as well as in the Supreme Court, when a § 2255 petitioner sets out detailed factual allegations ... the petitioner is entitled to a hearing unless the motion and the files on record conclusively show the petitioner is entitled to no relief.... Typically, this circuit has found some form of corroboration to a petitioner’s allegations before requiring a

hearing." Potts v. Zant, 638 F.2d 727, 751 (5th Cir. 1981)(citations omitted).¹ Because Dorsey's motion and the record offer no factual basis or proof – and certainly no corroboration of her claim – necessary to establish her claims, it should be dismissed.

E. The Court Correctly Imposed a Two-Point Enhancement for Possession of a Firearm.

Dorsey claims that the two-point enhancement based on possession of a firearm should be removed because she had a license for the firearm and the firearm was for protection. See Dorsey's Memorandum of Law in Support of Habeas Corpus Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C.A. §2255, at 5. An adjustment under U.S.S.G. § 2D1.1(b)(1) should be applied if the weapon was present, unless it is clearly improbable that the weapon was connected with the offense. United States v. Hansley, 54 F.3d 7009 (11th Cir. 1995). Under this provision, the government need only prove that the firearm was present during the drug trafficking offense. United States v. Audain, 254 F.3d 1286, 1289-90 (11th Cir.2001). Once the government does so, the burden shifts to the defendant to establish that a connection between the weapon and the offense was clearly improbable. Id. at 1289.

On May 7, 2004, agents executed a search warrant at the Dorsey's residence. PSI ¶ 9. During the search, agents found amphetamine, scales, marijuana and a firearm in Dorsey's bedroom. Agents found the amphetamines beside Dorsey's bed and the firearm in the bedside table. Indeed, Dorsey admitted gun was in her night stand and the amphetamines were located in a shoe box beside the same bed. Exhibit

¹ In Bonner v. City of Prichard, 661 F.2d 1206 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all decisions of the Fifth Circuit rendered prior to the close of business on September 30, 1981.

D at 9-10. Dorsey further admitted that she was selling the controlled substances out of her house. Exhibit D at 11. Because the gun was present during the drug trafficking offense of possession with the intent to distribute, the burden shifts to Dorsey to establish that a connection between the weapon and the offense was clearly improbable. Dorsey has put forth no evidence that the weapon and the offense are not connected. She only asserts that she had the licensed gun for protection. There is no question that drug dealing is a dangerous business. Many drug dealers have firearms for protection. This Circuit has recognized that "weapons have become tools of the trade for those involved in the distribution of illicit drugs." United States v. Alvarez, 755 F.2d 830, 849 (11th Cir.1985). However, Dorsey's assertion that she had the firearm for protection does not establish that the connection between the firearm and the drug trafficking offense was clearly improbable. It simply establishes that as a drug trafficker, she needed to protect her drugs, her drug proceeds and possibly herself from other drug traffickers.

F. Dorsey's Counsel was not Ineffective for Failing to Explain that, by Pleading Guilty, Dorsey Forfeited Her Right to Appeal.

Dorsey claims that her attorney was ineffective because he failed to "explain the 'pros' and 'cons' to a plea and the statutory 'maximum' and 'minimum' sentence for my agreeing to plea." See Dorsey's Memorandum of Law in Support of Habeas Corpus Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C.A. §2255, at 4. Dorsey further asserts that her attorney was ineffective because he "never fully explained to me the full scope of my taking the plea and what I was giving up by taking a plea." Id.

To succeed on a claim of ineffective assistance of counsel, a defendant must prove both that his counsel's performance was deficient and that the deficient performance prejudiced his case. Strickland v. Washington, 466 U.S. 668, 694 (1984); see also, Bell v. Cone, 535 U.S. 685, 697-98 (2002) (reaffirming the Strickland v. Washington standard for reviewing ineffective assistance of counsel claims); Caderno v. United States, 256 F.3d 1213, 1217 (11th Cir. 2001) (applying two-part test of Strickland v. Washington). More specifically, Movant must show that (1) identified acts or omissions of counsel fell below an objective standard of reasonableness, and (2) that his counsel's alleged errors or omissions resulted in prejudice to him to such an extent that, without counsel's alleged errors or omissions, there is a reasonable probability that the outcome of his trial would have been different. Yordan v. Dugger, 909 F.2d 474, 477 (11th Cir. 1990).

The Eleventh Circuit has described a defendant's burden in demonstrating that his counsel's deficient performance prejudiced his case as "high," noting that it is not enough to show that any errors had some conceivable effect on the outcome of the proceeding. Robinson v. Moore, 300 F.3d 1320, 1343-44 (11th Cir. 2002). To succeed on the ineffective assistance of counsel claim, the defendant must show that, but for counsel's unprofessional errors, the outcome of the proceeding would have been different.

As the Eleventh Circuit has noted, "[i]t is well established that a habeas petitioner must demonstrate both deficient performance and prejudice, and that a failure to demonstrate either prong constitutes a failure to demonstrate ineffective assistance of counsel." Bottoson v. Moore, 234 F.3d 526, 532 (11th Cir. 2000); accord, Robinson v.

Moore, 300 F.3d at 1343. As demonstrated below, Dorsey has failed to plead facts sufficient to demonstrate that she was prejudiced by any of counsel's actions. For that reason, her § 2255 motion should be summarily dismissed.

According to Dorsey's counsel's affidavit, Dorsey's counsel met with her on two separate occasions to discuss the provisions of the plea agreement. Exhibit E, at 2. Dorsey told her counsel that she understood the terms of the plea agreement. Id. Moreover, "Dorsey verbally acknowledged her understanding that she could appeal if her counsel had been ineffective or if the prosecution had engaged in misconduct; otherwise, she could not appeal or challenge her sentence in a post-conviction proceeding." Id. Clearly, Dorsey understood her waiver of appeal and admitted to her attorney that she understood.

Further, assuming, *arguendo*, that Dorsey's counsel never reviewed with Dorsey the "pros and cons" to entering a plea of guilty, the court carefully explained the implications of her pleading guilty at her plea hearing. The court explained her maximum penalties as well as the rights she relinquished by pleading guilty. The court further reviewed Dorsey's waiver of appeal and collateral attack. Because the court reviewed all essential issues in the plea hearing, even if Dorsey's counsel never explained the rights Dorsey relinquished or the waiver of appeal or collateral attack, Dorsey was not prejudiced by such. Thus, no relief is warranted.

V. CONCLUSION

For the above reasons, Defendant/Movant Jennifer Dorsey has failed to

demonstrate that she is entitled to any immediate relief from this Court and her § 2255 motion should be denied without an evidentiary hearing.

Respectfully submitted this 3rd day of January, 2008.

/s/ Clark Morris
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**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

JENNIFER DORSEY,)
Petitioner,)
v.) Civil No. 2:07CV831-MEF
United States of America,) Crim. No. 2:05CR208-MEF
Respondent.)

CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: Jennifer Dorsey, Prisoner No. 11759-002, Marianna Federal Prison Camp, 3625 FCI Road, Marianna, Florida 32446.

Respectfully submitted,

LEURA G. CANARY
UNITED STATES ATTORNEY

/s/ Clark Morris
CLARK MORRIS
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Exhibit A

FILED

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

SEP - 8 2005

CLERK
U.S. DISTRICT COURT
MIDDLE DIST. OF ALA.

UNITED STATES OF AMERICA)
) CR. NO. 2:05cr208-F
 v.) [21 U.S.C. § 841(a)(1), 18 USC
) 922(g)(3) and 924(c)]
 JENNIFER DORSEY)
)
) **INDICTMENT**

The Grand Jury charges:

COUNT 1

That on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama and elsewhere, the defendant,

JENNIFER DORSEY,

did knowingly, intentionally, and unlawfully possess with the intent to distribute approximately 373.4 grams of a mixture and substance containing a detectable amount of amphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

COUNT 2

That on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama and elsewhere, the defendant,

JENNIFER DORSEY,

did use and carry a firearm during and in relation to and did possess a firearm in furtherance of, a drug trafficking crime for which she may be prosecuted in a Court of the United States, to-wit: possession with the intent to distribute amphetamine as

charged in Count 1 of this indictment, in violation of Title 18, United States Code, Section 924(c)(1)(A).

COUNT 3

That on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama and elsewhere, the defendant,

JENNIFER DORSEY,

then being an unlawful user of a controlled substance as defined in 21 U.S.C. §802 did knowingly possess in and affecting commerce a firearm, to-wit: a Taurus .357 caliber revolver, bearing serial number OC41685, in violation of Title 18, United States Code, Section 922(g)(3).

FORFEITURE ALLEGATION

A. Counts 1 through 3 of this indictment are hereby repeated and incorporated herein by reference.

B. Upon conviction for the violation of Title 18, United States Code, Section 924(c)(1)(A), as alleged in Count 2 of this indictment and Title 18, United States Code, Section 922(g)(3), as alleged in Count 3 of this indictment the Defendant,

JENNIFER DORSEY,

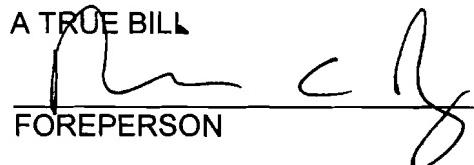
shall forfeit to the United States, pursuant to Title 18, United States Code, Section 924 and Title 28, United States Code, Section 2461(c), all firearms involved in the commission of this offense, including but not limited to the following:

One Taurus .357 Caliber Revolver, Serial Number OC41685.

C. If any of the property described in this forfeiture allegation, as a result of any act an omission of the defendant:

(1) cannot be located upon the exercise of due diligence;
(2) has been transferred, sold to, or deposited with a third person;
(3) has been placed beyond the jurisdiction of the court;
(4) has been substantially diminished in value; or,
(5) has been commingled with other property which cannot be divided without difficulty, the United States, pursuant to Title 21, United States Code, Section 853, as incorporated by Title 28, United States Code, Section 2461(c), intends to seek an Order of this Court forfeiting any other property of said defendant up to the value of the property described above.

All in violation of Title 18, United States Code, Section 924(c)(1)(A) and Title 18, United States Code, Section 922(g)(3).

A TRUE BILL


FOREPERSON

Leura J. Canary
LEURA GARRETT CANARY

United States Attorney

John T. Harmon
JOHN T. HARMON
Assistant United States Attorney

A. Clark Morris
A. CLARK MORRIS
Assistant United States Attorney

Exhibit B

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
) 2:05-cr-208-MEF-SRW
 v.)
)
 JENNIFER DORSEY)

PLEA AGREEMENT

DEFENSE COUNSEL: Jay Lewis

ASSISTANT U.S. ATTORNEY: A. Clark Morris

COUNT AND STATUTES CHARGED:

Count 1: 21 U.S.C. § 841(a)(1)

Possession with Intent to Distribute a Controlled Substance (Amphetamine)

Count 3: 18 U.S.C. § 922(g)(3)

Possession of a Firearm while being an Unlawful User or Addicted to a Controlled Substance

PENALTIES BY COUNT - MAXIMUM PENALTY:

Count 1: 21 U.S.C. § 841(a)(1)

Possession with Intent to Distribute a Controlled Substance (Amphetamine)

A term of imprisonment of not more than 20 years, a fine of not more than \$1,000,000 or both and a supervised release period of not less than three (3) years.

Count 3: 18 U.S.C. § 922(g)(3)

Possession of a Firearm while being an Unlawful User or Addicted to a Controlled Substance

A term of imprisonment of not more than 10 years, a fine of not more than \$250,000 or both and a supervised release period of not less than three (3) years.

ELEMENTS OF THE OFFENSE

21 U.S.C. § 841(a)(1):

1. The defendant knowingly possessed a controlled substance; and
2. The defendant had the intent to distributed or transferred possession of said controlled substance.

18 U.S.C. § 922(g)(3)

1. The defendant knowingly possessed a firearm or ammunition in or affecting interstate commerce, as charged; and
2. The defendant was an unlawful user or addicted to a controlled substance

A. Clark Morris, Assistant United States Attorney, and Jay Lewis, attorney for the defendant, pursuant to Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, as amended, have, with the authorization of the undersigned defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Indictment herein and a Plea Agreement has been reached by said parties.

GOVERNMENT'S PROVISIONS

1. Upon entering a plea of guilty by the defendant to the offenses charged in the Indictment, the attorney for the Government will do the following:

a. The Government will agree that a 2-level reduction in the applicable offense level pursuant to U.S.S.G. § 3E1.1(a) for the defendant's acceptance of responsibility is appropriate, so long as the defendant does not obstruct justice or otherwise fail to accept responsibility for the offense conduct. Should the Government find the defendant assisted authorities in the investigation or prosecution of his own misconduct

by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Government and this Court to allocate their resources efficiently, the Government will move at sentencing for a further reduction of one-level, pursuant to U.S.S.G. § 3E1.1(b). Determination of whether the defendant met the defendant's obligations to qualify for the reduction pursuant to U.S.S.G. § 3E1.1 is at the sole discretion of the United States.

b. Agree that the amount of amphetamine attributable to the defendant is approximately 373 grams.

c. Agree to dismiss Count Two of the Indictment.

d. Should the defendant complete the defendant's obligations contained within the Cooperation Agreement as set forth herein, the Government will move at sentencing for a downward departure pursuant to U.S.S.G. § 5K1.1 and Title 18, United States Code, Section 3553(e) to reflect the defendant's substantial assistance. In that motion, the Government will recommend a downward departure of at least four (4) levels. Determination of whether the defendant has met the defendant's obligations to qualify for the reduction pursuant to U.S.S.G. § 5K1.1 and Title 18, United States Code, Section 3553(e) is at the sole discretion of the United States. After sentencing, should Defendant provide further cooperation not contemplated by this agreement the Government may file for a further reduction pursuant to Fed. R. Crim. P. 35. Determination of whether to file for a downward departure pursuant to Rule 35, and if a departure is filed, the level of that departure, is at the complete discretion of the Government.

2. The United States reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning

the offenses and the defendant's background.

DEFENDANT'S PROVISIONS

1. The defendant agrees to the following:

- a. To plead guilty to the Indictment.
- b. Not to commit any other federal or state criminal offense while awaiting sentencing.

FACTUAL BASIS

1. The defendant admits the allegations charged in the Indictment and understands that the nature of the charge to which the plea is offered involves proof as to the charges in the indictment. Specifically, the defendant admits the following:

That on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama and elsewhere, the defendant, JENNIFER DORSEY, did knowingly, intentionally, and unlawfully possess with the intent to distribute approximately 373.4 grams of a mixture and substance containing a detectable amount of amphetamine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

That on or about the 7th day of May, 2004, in Montgomery County, within the Middle District of Alabama and elsewhere, the defendant, JENNIFER DORSEY, then being an unlawful user of a controlled substance as defined in 21 U.S.C. §802 did knowingly possess in and affecting commerce a firearm, to-wit: a Taurus .357 caliber revolver, bearing serial number OC41685, in violation of Title 18, United States Code, Section 922(g)(3).

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

1. Understanding that 18 U.S.C. § 3742 provides for appeal by a defendant of the sentence under certain circumstances, the defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. Defendant further expressly waives the right to appeal the conviction and sentence on any other ground and waives the right to attack the sentence in any post-conviction proceeding. This waiver does not include the right to appeal on the grounds of ineffective assistance of counsel and prosecutorial misconduct.

In return for the above waiver by the defendant, the Government does not waive its right to appeal the sentence imposed in the instant case. The Government does not waive its right to appeal any order dismissing the Indictment, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this agreement shall affect the Government's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b). However, if the United States appeals the defendant's sentence pursuant to 18 U.S.C. § 3742(b), the defendant is released from this waiver as to any issue the defendant may raise pursuant to 18 U.S.C. § 3742(a).

COOPERATION AGREEMENT

1. The defendant agrees to cooperate fully and testify truthfully against any and all persons as to whom the defendant may have knowledge at the grand jury, trial, or whenever called upon to do so. The defendant understands that this agreement requires the defendant to be truthful and to testify truthfully whenever called upon. The defendant agrees to be available for the review of documents and other materials and for interviews

by law enforcement officers and attorneys for the Government upon reasonable request and to fully and truthfully respond to all questions asked of the defendant by law enforcement officers and attorneys for the Government.

The defendant agrees to fully and truthfully disclose to the Government everything the defendant knows about any and all documents and materials in the defendant's possession that relate to the violations charged in this Indictment and any other criminal violations in the Middle District of Alabama and elsewhere. The defendant agrees, if desired by the Government, to travel with agents outside the Middle District of Alabama to identify others involved in with the Defendant, locations and/or residences of others involved, or any other information related to others involved in this narcotics trafficking activity. The defendant agrees to submit to a polygraph examination conducted by the Government if requested to do so.

Provided that the defendant satisfies the terms of this Plea Agreement, any information that the defendant truthfully discloses to the Government during the course of the defendant's cooperation, concerning related offenses, will not be used against the defendant, directly or indirectly. The defendant understands that this agreement does not bar the defendant's prosecution for capital felonies, perjury, false statements, and/or obstruction of justice.

If the defendant has failed or should fail in any way to fulfill completely the defendant's obligations under this agreement, then the Government will be released from its commitment to honor all of its obligations to the defendant, without the defendant being allowed to withdraw the guilty plea. Thus, if at any time the defendant should knowingly and willfully withhold evidence from, or is found to have provided false information to, the Government investigators

or attorneys prior to or during the defendant's testimony before grand juries or in trials, or fails to return to the Middle District of Alabama for any scheduled court appearance or any scheduled meeting with law enforcement agents in the Middle District of Alabama, then the Government will be free: (1) to prosecute the defendant for perjury, false declaration, false statement, and/or obstruction of justice (18 U.S.C. §§ 1621, 1623, 1001, 1503); (2) to prosecute the defendant for all violations of federal criminal law which the defendant has committed; (3) to use against the defendant in all of those prosecutions and sentencing the information and documents that the defendant has disclosed or furnished to the Government during the course of the defendant's cooperation; (4) to recommend a maximum sentence; and, (5) to seek forfeiture of any and all forfeitable properties of the defendant. The question of whether Defendant has breached this agreement shall be at the sole discretion of the Government.

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

1. The defendant, before entering a plea of guilty to the indictment, as provided for herein by said Plea Agreement, advises the Court that:
 - a. The discussions between the attorney for the Government and the attorney for the defendant towards reaching an agreed plea in this case have taken place with the defendant's authorization and consent.
 - b. The defendant further understands that, pursuant to 18 U.S.C. § 3013, said \$200.00 assessment fee is to be paid by the defendant on the date of sentencing and that, if a fine is imposed by the Court at sentencing, the defendant shall meet with a member of the Financial Litigation Section of the United States Attorney's Office on the day of sentencing and complete a written personal financial statement setting forth the defendant's assets and liabilities as of the date of the offense. The defendant will make an honest, good faith effort to

pay said fine as directed by the Financial Litigation Section of the United States Attorney's Office. The defendant further understands that by completing the financial statement, the defendant is representing that it is true and accurate to the best of the defendant's information, knowledge, and belief.

c. The defendant understands that the defendant has a right to be represented by an attorney at every stage of the proceedings against the defendant herein and is represented by the defendant's undersigned attorney.

d. The defendant understands that the defendant has the right to plead not guilty and has the right to be tried by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the defendant, the right to call witnesses in the defendant's own behalf, and the right not to be compelled to incriminate the defendant, and that if the defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the defendant waives the right to a trial by jury or to a trial before the Court.

e. The defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

f. The Defendant further understands and advises the Court that the Plea Agreement as set forth herein and the plea to be entered by the defendant as a result thereof is voluntary on the defendant's part and is not the result of any force or threats or of any

promises apart from the aforesaid Plea Agreement. The defendant further advises the Court that the Plea Agreement set forth herein is the result of prior discussions between the attorney for the Government and the attorney for the defendant, all conducted with the defendant's authorization, knowledge, and consent.

g. The defendant further advises the Court that the defendant's understanding of this Plea Agreement is as set forth in this document.

h. The defendant further understands that the Government can only make a recommendation, which is not binding upon the Court. However, if the Court does not accept the plea agreement, the defendant may withdraw his guilty plea, if he so chooses.

i. The defendant further advises the Court that the defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crime charged in the Indictment herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the defendant. However, the defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Indictment herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the defendant under oath, on the court record, and in the presence of counsel.

j. The defendant further understands that if the defendant has failed or should fail in any way to fulfill completely the defendant's obligations under this agreement, including, but not limited to, committing any new state or federal criminal offense while awaiting sentencing, then the Government will be released from its commitment to honor all of its obligations to the defendant without the defendant being able to withdraw his guilty plea. The

determination of whether the defendant has breached this plea agreement by failing to fulfill the defendant's obligations herein, will be at the sole discretion of the Government.

k. The defendant is satisfied that defense counsel has been competent and effective in representing defendant.

2. The undersigned attorneys for the Government and for the defendant represent to the court that the foregoing Plea Agreement is the agreement of the parties that has been reached pursuant to the Plea Agreement procedure provided for in Rule 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended. The attorney for the defendant further advises the Court that the defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the defendant has been advised of the defendant's right to plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the defendant and the right not to be compelled to incriminate the defendant; and that if the defendant pleads guilty, there will not be a further trial of any kind. Further, the defendant has been advised that if the defendant pleads guilty, the Court may ask questions about the offense to which the defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the defendant in a civil or criminal proceeding, but that the defendant's answers may later be used against the defendant in a prosecution for perjury or false statement if the answers are not truthful.

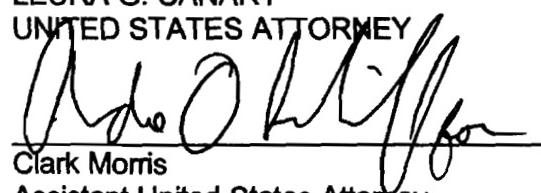
3. The defendant understands that the U.S. Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the defendant's conduct related to the offense to which the plea is offered, as well as the defendant's criminal history.

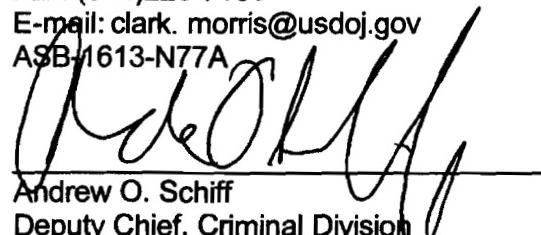
The offense level or criminal history category, as calculated by the Probation Officer and determined by the court, may differ from that projected by defendant's counsel or the U.S. Attorney.

This 25th day of May, 2006.

Respectfully submitted,

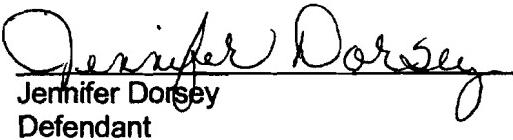
LEURA G. CANARY
UNITED STATES ATTORNEY


Clark Morris
Assistant United States Attorney
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E-mail: clark.morris@usdoj.gov
ASB-1613-N77A


Andrew O. Schiff
Deputy Chief, Criminal Division

I have read the foregoing Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement that has been reached.

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL.


Jennifer Dorsey
Defendant

5/25/06
Date


Jay Lewis
Attorney for the Defendant

5/25/06
Date

Exhibit C

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

UNITED STATES OF AMERICA

6 | VS. CASE NO.: 2:05cr208-MEF

7 JENNIFER DORSEY,

8 Defendant.

10 | CHANGE OF PLEA HEARING

11
12 BEFORE THE HONORABLE SUSAN RUSS WALKER, UNITED
13 STATES MAGISTRATE JUDGE, at Montgomery, Alabama, on
14 Thursday, May 25, 2006, commencing at 3:20 p.m.

APPEARANCES

16 FOR THE GOVERNMENT: Mr. Kent Brunson
17 Assistant United States Attorney
18 OFFICE OF THE UNITED STATES ATTORNEY
131 Clayton Street
Montgomery, Alabama 36104

19 FOR THE DEFENDANT: Mr. Jay Lewis
LAW OFFICES OF JAY LEWIS
20 Attorneys at Law
847 South McDonough Street
21 Montgomery, Alabama 36104

Proceedings reported stenographically;
transcript produced by computer

5 | (Call to Order of the Court)

6 THE COURT: This is United States versus Jennifer
7 Dorsey, 2:05cr208-F. We're here for a change of plea.
8 Previously, the Court was informed that the defendant
9 wishes to change her plea and consents to having the
10 guilty plea proceedings conducted by a United States
11 magistrate judge. I am a United States magistrate judge.
12 The next higher ranking judge is a district judge, and you
13 have the right to have a district judge take your plea if
14 you wish. If you'd like me to take your plea today, you
15 need to read and sign the consent form, please.

16 | (Mr. Lewis and the defendant comply)

17 MR. LEWIS: My client has signed the form
18 consenting to exercise of jurisdiction by the magistrate
19 judge in this case.

THE COURT: Thank you. Would counsel briefly summarize the terms of the plea agreement?

22 MR. BRUNSON: Your Honor, this was a plea
23 agreement that was reached between Clark Morris, for whom
24 I am standing in, and Mr. Lewis on behalf of Ms. Dorsey.
25 It says that it is an 11(c)(1)(C) plea.

1 There are three counts to this indictment. The
2 agreement provides that Ms. Dorsey will plead guilty to
3 Counts 1 and 3, and Count 2 will be dismissed.

4 There is an agreement that the amount of
5 amphetamine in the case is approximately 373 grams.

6 There is a cooperation agreement, and it says in
7 the agreement a downward departure of at least four
8 levels. And I do note some information in the file that
9 there has already been some cooperation. In talking with
10 Mr. Lewis, he confirms that there already has been some
11 cooperation.

12 There is also a provision, a three-level
13 departure on the offense -- the offense category for
14 pleading early, for acceptance of responsibility. And
15 there is also information that if appropriate, there could
16 be a departure under Rule 35. And I'm not sure -- and
17 maybe Mr. Lewis can shed some light on it -- if that is in
18 addition to the minimum four level, or if that includes
19 the minimum four level.

20 MR. LEWIS: That's in addition to the four
21 level. The four level is taken under the guidelines
22 themselves.

23 THE COURT: All right. And is there a waiver of
24 appeal as --

25 MR. BRUNSON: Yes, Your Honor.

1 THE COURT: -- and collateral attack?

2 MR. BRUNSON: Yes, Your Honor.

3 THE COURT: All right. We'll swear in the
4 defendant.

5 THE CLERK: If you'd raise your right hand.

6 (The defendant is sworn.)

7 MR. LEWIS: Your Honor, may I, before the Court
8 starts --

9 THE COURT: Yes.

10 MR. LEWIS: -- may I add something else? It is a
11 three-count indictment. I would note, though, that the
12 third count is a civil forfeiture count. So there are
13 only two counts for which there will be a plea. She is
14 not contesting the forfeiture.

15 MR. BRUNSON: I don't agree with that, Your
16 Honor. I would like for Mr. Lewis to explain to me.
17 Count 3 appears to be a substantive count.

18 MR. LEWIS: I'm sorry. Your Honor, I apologize.
19 There's a forfeiture --

20 MR. BRUNSON: In addition to the three counts,
21 there is a forfeiture allegation.

22 MR. LEWIS: Right, and that's the one I was
23 thinking of. And I apologize to the Court and to
24 Mr. Brunson.

25 THE COURT: All right. So she's pleading guilty

1 to Counts --

2 MR. BRUNSON: 1 and 3.

3 THE COURT: -- 1 and 3?

4 MR. BRUNSON: Yes, Your Honor.

5 THE COURT: All right.

6 Ms. Dorsey, do you understand that you are now
7 under oath, and that if you answer any of the questions
8 asked here falsely, your answers may later be used against
9 you in another prosecution for perjury or making a false
10 statement?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: What is your full name, please?

13 THE DEFENDANT: Jennifer Dorsey.

14 THE COURT: How old are you?

15 THE DEFENDANT: 44.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: Twelfth grade.

18 THE COURT: Have you been treated recently for
19 any mental illness or addiction to narcotic drugs of any
20 kind?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: You have?

23 THE DEFENDANT: (Nods head.)

24 THE COURT: How recently?

25 THE DEFENDANT: I graduated from CAPS about a

1 month -- probably about two months ago.

2 THE COURT: Okay. And you've completed the
3 program successfully?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Congratulations.

6 THE DEFENDANT: Thank you.

7 THE COURT: Are you currently under the influence
8 of any drug, medication, or alcoholic beverage of any
9 kind?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Have you received a copy of the
12 indictment pending against you; that is, the written
13 charges made against you in this case?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: You have?

16 THE DEFENDANT: (Nods head.)

17 THE COURT: Okay. I just need you to speak up a
18 little bit. I'm sorry.

19 THE DEFENDANT: I'm sorry.

20 THE COURT: Have you fully discussed those
21 charges and the case in general with Mr. Lewis as your
22 counsel?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Are you fully satisfied with the
25 counsel, representation, and advice given to you in this

1 case by your attorney, Mr. Lewis?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: There is a written plea agreement in
4 this case. Did you have the opportunity to read and
5 discuss the plea agreement with your lawyer before you
6 signed it?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Does the plea agreement represent in
9 its entirety any understanding that you have with the
10 government?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand the terms of the
13 plea agreement?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Has anyone made any other or
16 different promise or assurance of any kind to you in an
17 effort to induce you to plead guilty in this case?

18 THE DEFENDANT: No, ma'am.

19 THE COURT: Do you understand that if the Court
20 chooses not to follow the terms of the plea agreement, the
21 Judge will give you the opportunity to withdraw your plea
22 of guilty; and that if you choose not to withdraw your
23 plea, he may impose a more severe sentence without being
24 bound by the plea agreement?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Has anyone attempted in any way to
2 force you to plead guilty in this case?

3 THE DEFENDANT: No, ma'am.

4 THE COURT: Are you pleading guilty of your own
5 free will because you are guilty?

6 THE DEFENDANT: Yes, ma'am, I am.

7 THE COURT: Do you understand that the offenses
8 to which you are pleading guilty are felony offenses; that
9 if your plea is accepted, you will be adjudged guilty of
10 those offenses; and that such adjudication may deprive you
11 of valuable civil rights, such as the right to vote, the
12 right to hold public office, the right to serve on a jury,
13 and the right to possess any kind of firearm?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: The maximum penalty provided by law
16 for Counts 1 and 3 is as follows: For Count 1, no more
17 than \$1 million fine, no more than 20 years' imprisonment,
18 or both the fine and the imprisonment; no less than three
19 years' supervised release, a \$100 assessment fee, and you
20 may be asked to make restitution to any victim of the
21 offense. And for Count 3, no more than \$250,000 fine, no
22 more than 10 years' imprisonment, or both the fine and the
23 imprisonment, no more than three years supervised release,
24 a \$100 assessment fee, and you may be asked to make
25 restitution to any victim of the offense.

1 Do you understand the maximum punishment for
2 those two counts?

3 THE DEFENDANT: Yes, ma'am, I do.

4 THE COURT: With regard to supervised release, do
5 you understand that if you violate the conditions of
6 supervised release, you can be given additional time in
7 prison?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand that you must pay
10 an assessment fee of \$100 for each count?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Do you understand that under the
13 Sentencing Reform Act of 1984, the United States
14 Sentencing Commission has issued guidelines for judges to
15 follow in determining the sentence in a criminal case?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And do you understand that under
18 recent Supreme Court decisions, those sentencing
19 guidelines are now considered to be advisory guidelines?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Have you and your attorney talked
22 about how the advisory sentencing guidelines might apply
23 to your case?

24 THE DEFENDANT: Yes, ma'am, we have.

25 THE COURT: Do you understand that parole has

1 been abolished and that if you are sentenced to prison,
2 you will not be released on parole?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand that there is a
5 forfeiture allegation in this indictment, and that you may
6 be asked to forfeit assets as set out in the indictment?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you understand that under some
9 circumstances, you or the government may have the right to
10 appeal any sentence that the Court imposes?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you understand that by
13 entering into this plea agreement and entering a plea of
14 guilty, you will have waived, or given up, your right to
15 appeal all -- sorry -- or to collaterally attack all or
16 part of this sentence?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you understand that you have the
19 right to plead not guilty to any offense charged against
20 you and to persist in that plea; that you would then have
21 the right to a trial by jury; that at trial, you would be
22 presumed to be innocent, and the government would have to
23 prove your guilt beyond a reasonable doubt?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand that you would have

1 the right to the assistance of counsel for your defense,
2 the right to see and hear all the witnesses and have them
3 cross-examined in your defense, the right on your own part
4 to decline to testify unless you voluntarily elected to do
5 so in your own defense, and the right to the issuance of
6 subpoenas or compulsory process to compel the attendance
7 of witnesses to testify in your defense?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Do you understand that should you
10 decide not to testify or put on any evidence, these facts
11 cannot be used against you?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you further understand that by
14 entering a plea of guilty, if that plea is accepted by the
15 district judge, there will be no trial, and you will have
16 waived, or given up, your right to a trial as well as
17 those other rights associated with a trial as I just
18 described them?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: The charges to which you're pleading
21 guilty are set out in Counts 1 and 3 of the indictment.
22 Count 1 charges that on or about the 7th day of May 2004,
23 in Montgomery County, within the Middle District of
24 Alabama and elsewhere, that you knowingly, intentionally,
25 and unlawfully possessed with the intent to distribute

1 approximately 373.4 grams of amphetamine, a Schedule II
2 controlled substance, in violation of 21 U.S.C. Section
3 841(a)(1). Do you understand that that's one of the
4 counts to which you're pleading guilty today?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Count 3 charges that on or about the
7 7th day of May 2004, in Montgomery County, within the
8 Middle District of Alabama and elsewhere, that you, then
9 being an unlawful user of a controlled substance as
10 defined in 21 U.S.C. Section 802, did knowingly possess in
11 and affecting commerce a firearm -- that is, a Taurus .357
12 caliber revolver with a serial number 0-C41685 -- in
13 violation of 18 U.S.C. Section 922(g)(3). Do you
14 understand that that's the second count to which you're
15 pleading guilty today?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: The elements of these offenses are as
18 follows: For Count 1, that you knowingly possessed a
19 controlled substance and that you had the intent to
20 distribute or transfer possession of that controlled
21 substance; and for Count 2, that you knowingly possessed a
22 firearm or ammunition in or affecting interstate commerce,
23 as charged, and second, that you were an unlawful user or
24 addicted to a controlled substance at that time.

25 Do you understand the elements of these two

1 offenses?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: I need to find whether or not there
4 is a factual basis for the plea. How would you like to
5 proceed?

6 MR. LEWIS: I'll do it, Your Honor.

7 State your name, please.

8 THE DEFENDANT: Jennifer Dorsey.

9 MR. LEWIS: Ms. Dorsey, on or about May 7th,
10 2004, did you live in Montgomery County, Alabama?

11 THE DEFENDANT: Yes, sir.

12 MR. LEWIS: On that day and in Montgomery County,
13 did you possess a substance, approximately 373 grams of a
14 mixture containing amphetamine?

15 THE DEFENDANT: Yes, sir.

16 MR. LEWIS: And did at that time that you
17 possessed it you have the intent to distribute it?

18 THE DEFENDANT: Yes, sir.

19 MR. LEWIS: During that period of time, did you
20 use amphetamine or methamphetamine or any other controlled
21 substance?

22 THE DEFENDANT: Yes, sir.

23 MR. LEWIS: During the time that you used a
24 controlled substance, did you have possession of a Taurus
25 .357 pistol?

1 THE DEFENDANT: Yes, sir.

2 MR. LEWIS: And did you know when you possessed
3 the substance containing amphetamine that, in fact, it did
4 contain a controlled substance?

5 THE DEFENDANT: Yes, sir.

6 MR. LEWIS: I believe that establishes the
7 elements, Your Honor.

8 MR. BRUNSON: The only other thing, Your Honor,
9 is I would submit if the case were to go to trial, an ATF
10 expert would testify that that Taurus .357 caliber
11 revolver traveled in interstate commerce.

12 THE COURT: Does the defendant agree to that?

13 MR. LEWIS: We understand that, Your Honor. Yes,
14 we do.

15 THE COURT: How do you now plead to the charges
16 against you in Counts 1 and 3 of the indictment, guilty or
17 not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: It is the finding of the Court in the
20 case of United States versus Jennifer Dorsey that the
21 defendant is fully competent and capable of entering an
22 informed plea, that the defendant is aware of the nature
23 of the charges and the consequences of the plea, and that
24 the plea of guilty is a knowing and voluntary plea
25 supported by an independent basis in fact containing each

1 of the essential elements of the offense. The plea is
2 therefore accepted, and the defendant is now adjudged
3 guilty of those offenses.

4 A written presentence report will be prepared by
5 the probation office to assist the Court in sentencing.
6 You will be asked to give information for the report, and
7 your attorney may be present for that if you wish. The
8 Court will permit you and your counsel to read the
9 presentence report and file any objections to it before
10 the sentencing hearing, and you and your counsel will have
11 the opportunity to speak on your behalf at the sentencing
12 hearing.

13 The date for your sentencing will be set by
14 order. And with regard to detention or release, the
15 release status report to the Court indicates that you have
16 generally complied with your conditions of release, that
17 you've obtained and maintained employment with a storage
18 and transfer company, and that you attended and
19 successfully completed the Chemical Addictions Program.
20 The probation officer, because of the statutory mandate,
21 does, however, recommend that you be remanded to the
22 custody of the United States Marshal, as required by 18
23 U.S.C. Section 3143, unless exceptional circumstances for
24 your continued release are given in this proceeding. And
25 I'll hear from the parties in that regard.

1 MR. LEWIS: Thank you, Your Honor. We would
2 suggest to the Court the exceptional conditions do --
3 exceptional circumstances do exist. Ms. Dorsey has been
4 cooperating with Agent DeJohn of the ATF -- excuse me --
5 DEA, and she has had already at least two proffer meetings
6 with Agent DeJohn. She is continuing to cooperate.
7 Apparently, the DEA is searching for an additional
8 individual who may be charged and prosecuted in this
9 manner -- or in this case, and Ms. Dorsey would make a
10 valuable if not the only witness against him. And we
11 would suggest to the Court that such exceptional
12 circumstances do exist as would warrant allowing
13 Ms. Dorsey to remain out until sentence.

14 THE COURT: Is her release necessary for her
15 cooperation?

16 MR. LEWIS: No, ma'am. I mean, certainly she
17 could -- she's -- she is offering to cooperate under all
18 circumstances.

19 THE COURT: Okay.

20 MR. BRUNSON: Your Honor, I'd -- since this is
21 not my case, I have to reflect what I see in the file. I
22 was not told to move for detention. And I do see, and I
23 think, as I've already stated, some information that shows
24 that she was -- that she has cooperated. And certainly if
25 we were to ask that she be detained, then I think it would

1 thwart the efforts of the plea agreement for her to give
2 further substantial assistance. I do think that there are
3 exceptional circumstances and don't object to Mr. Lewis's
4 motion.

5 THE COURT: So the government does not oppose her
6 release?

7 MR. BRUNSON: No, Your Honor.

8 THE COURT: Under those circumstances, I will
9 find that there are exceptional reasons why your detention
10 would not be appropriate and that you are not likely to
11 flee or pose a danger to the safety of any other person or
12 the community pending imposition of sentence. I will
13 therefore order that you be released and continued under
14 the same conditions that were imposed on August 24th,
15 2005.

16 Let me remind you with regard to sentencing that
17 failure to appear as required is a criminal offense for
18 which you could be sentenced to imprisonment independently
19 of this charge, and that all the conditions on which you
20 were released up till now do continue to apply, and that
21 the penalties for violating those conditions can also be
22 severe. Do you understand that?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: All right. I will continue you on
25 release pursuant to the terms of this order. Thank you.

1 MR. BRUNSON: Thank you, Your Honor.

2 MR. LEWIS: Thank you, Your Honor.

3 THE CLERK: Court is recessed.

4 (Proceedings concluded at 3:37 p.m.)

5 * * * * *

6 TRANSCRIBER'S CERTIFICATE

7 I certify that the foregoing is a true and
8 correct transcript, to the best of my ability, from the
9 stenographic notes provided to me by Official Court
10 Reporter Risa L. Entrekin.

11 This 10th day of December 2007.

12

13 /s/ Patricia G. Starkie
14 Registered Diplomate Reporter
Certified Realtime Reporter
Official Court Reporter
15

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Exhibit D

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE MIDDLE DISTRICT OF ALABAMA

3 NORTHERN DIVISION

4

5 UNITED STATES OF AMERICA

6 vs. CASE NO.: 2:05cr208-MEF

7 JENNIFER DORSEY,

8 Defendant.

9 * * * * *

10 SENTENCING

11 * * * * *

12 BEFORE THE HONORABLE MARK E. FULLER, UNITED STATES
13 DISTRICT JUDGE at Montgomery, Alabama, on September 11, 2006,
14 commencing at 11:25 a.m.

15 APPEARANCES

16 FOR THE GOVERNMENT: Ms. A. Clark Morris
17 Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
131 Clayton Street
18 Montgomery, Alabama 36104

19 FOR THE DEFENDANT: Mr. Jay Lewis
20 LAW OFFICES OF JAY LEWIS
Attorneys at Law
847 South McDonough Street
21 Montgomery, Alabama 36104

22 Proceedings reported stenographically;

23 transcript produced by computer

24

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EXAMINATION INDEX

JENNIFER DORSEY

HERMAN WESLEY

CABOTT STOUGH

GLEN WINKLER

10 DIRECT BY MR. LEWIS 30

11 | * * * * * * * * * * * * * * * *

16 THE COURT: I'll call the case of United States of
17 America versus Jennifer Dorsey. Good morning.

18 MR. LEWIS: Good morning, Your Honor.

19 THE COURT: Mr. Lewis, I have reviewed the pleadings
20 that were filed recently in this case, and I'm going to take
21 your memorandum to the Court filed on September the 2nd as an
22 objection. Even though it was filed late, I will allow you the
23 opportunity to argue that or call witnesses if you wish to
24 present evidence in support of that request, recommendation or
25 objection or whatever the case may be. If you wish to present

1 evidence, I'm going to ask that you and Ms. Dorsey remain at
2 counsel table if you think you can proceed without the necessity
3 of calling witnesses. Then you may approach the podium.

4 MR. LEWIS: Your Honor, I don't have any witnesses to
5 call as to the objection -- and I think the only objection posed
6 was to the two-point enhancement. The remainder, and I do plan
7 to call three witnesses, will be speaking to the desire on our
8 part for leniency by the Court.

9 THE COURT: All right. Why don't you just remain at
10 counsel table, and we can take up your responses from there as
11 we proceed, Ms. Dorsey.

12 Ms. Dorsey, today the Court will determine a reasonable
13 sentence in your case by considering the United States
14 Sentencing Guidelines, which were promulgated pursuant to the
15 Sentencing Reform Act of 1984, and which are now advisory, and
16 by considering the factors set forth in 18 United States Code
17 Section 3553(a).

18 It appears that a plea agreement has been reached in
19 your case pursuant to the requirements of Rule 11(c)(1)(C),
20 which is commonly referred to as a binding plea agreement under
21 the Federal Rules of Criminal Procedure. Is that, in fact,
22 still the case?

23 MS. MORRIS: It is, Your Honor.

24 MR. LEWIS: It is, Your Honor.

25 THE COURT: I would ask counsel for either the United

1 States or for the defendant to state the terms of the plea
2 agreement before we proceed further.

3 MS. MORRIS: Yes, Your Honor. As outlined in the plea
4 agreement that was filed in this case, the government agreed to
5 make a motion for the third point for acceptance of
6 responsibility, assuming that the defendant did qualify for
7 such, and she did. The government and the defendant further
8 agree that the amount of amphetamine attributable to the
9 defendant in this case is approximately 373 grams of
10 amphetamine. And if I said methamphetamine, I meant to say
11 amphetamine. The government further agrees upon being sentenced
12 that the government will dismiss Count 2 of the indictment. And
13 if the defendant complies with the obligations in the
14 cooperation agreement that is outlined in the plea agreement,
15 the government will then make a motion pursuant do 5K1.1 of the
16 sentencing guidelines for downward departure. Such motion would
17 be at least four levels. In return, the defendant just agrees
18 to plead guilty to the indictment, except for Count 2, of
19 course, and not to commit any other federal, state, or local
20 crimes. I will also mention for the Court that there was a
21 waiver of appeal.

22 THE COURT: Mr. Lewis, anything to add to what has been
23 represented to the Court?

24 MR. LEWIS: No, Your Honor. That was fairly stated.

25 THE COURT: All right. There are also two other

1 motions that are pending before the Court. That is a motion for
2 the application of the third point for acceptance of
3 responsibility to the offense level under Section 3E1.1(b) of
4 the United States Sentencing Guidelines, and a motion for
5 downward departure for the defendant's substantial assistance
6 pursuant to Section 5K1.1 of the United States Sentencing
7 Guidelines.

8 Before we proceed on those motions, let me tell you,
9 Ms. Dorsey, that I have reviewed the presentence report of
10 investigation, the motions filed by the government as I have
11 recited, the plea agreement, the memorandum to the Court, along
12 with the -- I think there are 11 letters in support of leniency
13 by this Court. And it is the Court's intentions, as I am
14 required to inform you, to accept your plea and to sentence you
15 in accordance with the terms of the plea agreement.

16 After having made that finding or made that known to
17 you, Ms. Dorsey, I will address the United States' motion for
18 the application of the third point for acceptance of
19 responsibility under Section 3E1.1, subsection (b), which is
20 document number 36. Without objection, that motion is granted,
21 and the third point would be applied to you for your acceptance
22 of responsibility in calculating a recommended sentence under
23 the United States Sentencing Guidelines.

24 Ms. Dorsey, have you and your attorney had an
25 opportunity to review the presentence report before today's

1 date?

2 THE DEFENDANT: Yes, sir, we have.

3 THE COURT: Do you have any objections to any of the
4 content of the presentence report?

5 THE DEFENDANT: No, sir.

6 THE COURT: Any objections by the United States?

7 MS. MORRIS: There are not, Your Honor.

8 THE COURT: Mr. Lewis, how am I to take your
9 memorandum? I don't know whether to take that as an objection
10 or to take that as part of the opportunity for the defendant to
11 make a statement prior to the sentence being imposed. Which
12 would you rather me do?

13 MR. LEWIS: Your Honor, there are parts of that
14 memorandum to which we have witnesses to testify in terms of
15 super acceptance of responsibility, of extraordinary measures
16 taken to effect rehabilitation, and I don't know how the Court
17 would like to proceed. The part about the objection to the
18 enhancement, that's going to be strictly argument; and frankly,
19 Your Honor, it's all laid out in the memorandum itself.

20 THE COURT: Well, as to the legal arguments that I
21 would construe to be an objection to the two points that were
22 applied for possession of a firearm in connection with a drug
23 trafficking offense -- let me make sure my terminology is
24 accurate -- under Section 2D1.1(b)(1) of the United States
25 Sentencing Guidelines, without objection to the factual basis

1 asserted in the presentence report investigation, I would make
2 the factual finding that the firearm that was found and
3 recovered in the same room where the drugs were recovered, even
4 with the cooperation of Ms. Dorsey, was a firearm possessed in
5 relation to a drug trafficking offense, and I would find both
6 factually and legally that the two-point enhancement would
7 apply. If you have witnesses that you wish to call in regards
8 to this enhancement on a factual basis, I'd allow you to call
9 them at this point. If you are calling witnesses for the
10 purpose of requesting the Court's leniency in some fashion, you
11 may reserve that right to call them at that time.

12 MR. LEWIS: In that case, Your Honor, I would call
13 Jennifer Dorsey to testify as to the factual basis for our
14 objection.

15 THE COURT: Okay. You may approach, Ms. Dorsey. If
16 you will, take the witness stand.

17 THE CLERK: You do solemnly swear or affirm that the
18 testimony you give in this cause to be the truth, the whole
19 truth, and nothing but the truth, so help you God?

20 THE WITNESS: I do.

21 JENNIFER DORSEY, the witness, having been duly sworn,
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. LEWIS:

25 Q. State your name, please.

1 A. Jennifer Dorsey.

2 Q. Ms. Dorsey, sometime on or before May 7th, 2005, there was
3 a -- you met somebody in a car; is that correct?

4 A. Yes, sir.

5 Q. And that's the basis for the later search of your house; is
6 that correct?

7 A. Right, yes, sir.

8 Q. Okay. When you met somebody in the car, when you went out,
9 did you possess a weapon with you at that time in your physical
10 possession?

11 A. No, sir.

12 Q. In connection with the possession of the amount of
13 amphetamine that was located in your house, was there any
14 connection between that and the weapon that you had in your
15 nightstand?

16 A. No, sir.

17 Q. The fact is they were both under the same roof; is that
18 correct?

19 A. Yes, sir.

20 Q. Did you ever during any drug transaction, receipt,
21 transmission, anything else in your life, did you ever hold that
22 weapon in your hand?

23 A. No, sir.

24 Q. What was that weapon there for, Ms. Dorsey?

25 A. For protection for my daughter and myself.

1 Q. Your daughter is how old?

2 A. Thirteen.

3 Q. And she lived with you in the house?

4 A. Yes, sir.

5 Q. Were you the only two people in that house?

6 A. At the time that -- when they came in, no, sir.

7 Q. Okay. But prior to that time?

8 A. Yes, sir.

9 Q. Okay. Was it prior to that time that you acquired the

10 handgun?

11 A. Yes, sir.

12 Q. Did you ever have any intention of using, brandishing,

13 holding, waving or in any other way utilizing that handgun in

14 connection with a drug offense?

15 A. No, sir.

16 MR. LEWIS: Your Honor, that's all we have factually on

17 that matter.

18 THE COURT: Cross?

19 MS. MORRIS: Just briefly, Your Honor.

20 CROSS EXAMINATION

21 BY MS. MORRIS:

22 Q. Ms. Dorsey, the gun was found in your nightstand; is that

23 correct?

24 A. Yes, ma'am.

25 Q. And the methamphetamine was found, I believe -- found in the

1 same bedroom?

2 A. Yes, ma'am.

3 MR. LEWIS: Objection.

4 Q. Is that correct?

5 MR. LEWIS: Object, Your Honor. I believe she
6 misstated -- partly misstated that. It's amphetamine.

7 MS. MORRIS: I apologize. I do keep doing that.

8 THE COURT: That's all right.

9 Q. Let me back up. At the time, though, this was purported
10 methamphetamine; is that correct? Did you know it was
11 methamphetamine or know it was amphetamine at the time?

12 A. I wasn't sure what it was, to tell you the truth.

13 Q. But you knew it was either methamphetamine or amphetamine?

14 A. I knew it was some kind of drug.

15 Q. And this amphetamine was found in the same bedroom with the
16 gun?

17 A. Yes, ma'am.

18 Q. In fact, this amphetamine was found beside the bed; is that
19 correct?

20 A. It was up further from the nightstand, yes, ma'am.

21 Q. Part of it was actually found in a shoe box; is that
22 correct?

23 A. That's where it was at, yes, ma'am.

24 Q. And there was also found in that same bedroom some
25 marijuana; is that correct?

1 A. Yes, ma'am.

2 Q. And some scales?

3 A. Yes, ma'am.

4 Q. And the scales were used for you or whomever to weigh up the

5 amphetamine?

6 A. Yes, ma'am.

7 Q. And at the time -- I think you've been pretty honest. At

8 that time in your life, you were selling amphetamine or

9 methamphetamine?

10 A. Yes, ma'am.

11 Q. And you were selling it partially out of your house; is that

12 correct?

13 A. Yes, ma'am.

14 Q. People would come to your house?

15 A. Yes, ma'am.

16 Q. And you were selling or you had over 300 grams of

17 amphetamine in your house on the day of the search warrant?

18 A. Yes, ma'am.

19 Q. And that is worth how much?

20 A. Probably -- I really don't remember.

21 Q. Thousands of dollars, though?

22 A. Yes, ma'am.

23 Q. I mean, we're not talking about a small amount. Thousands

24 of dollars, probably over \$5,000; isn't that about right?

25 A. Probably 3,000.

1 Q. Okay. Let's say 3,000. So you were dealing in large sums
2 of money at that time?

3 A. Yes, ma'am.

4 Q. And you had the money around?

5 A. Yes, ma'am.

6 Q. And you had these drugs around?

7 A. Yes, ma'am.

8 MS. MORRIS: That's all I have at this time, Your
9 Honor.

10 THE COURT: Redirect?

11 RECROSS EXAMINATION

12 BY MR. LEWIS:

13 Q. One follow-up question, Ms. Dorsey. Did you ever deal,
14 sell, or receive any drugs while physically back in your bedroom
15 at the same place the gun was?

16 A. No, sir.

17 MR. LEWIS: That's all I have, Your Honor.

18 THE COURT: Any recross by the United States?

19 MS. MORRIS: No, Your Honor.

20 THE COURT: Ms. Dorsey, I have some questions for you.

21 The presentence report indicates that before your
22 arrest in May of 2004 that you had admittedly been using either
23 amphetamine or methamphetamine continuously for five years?

24 THE DEFENDANT: Probably, yes, sir.

25 THE COURT: And at that time, you had your 13-year-old

1 daughter that lived with you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I'm making the assumption that you've been
4 around people that have used and seen the effects of
5 methamphetamine use?

6 THE DEFENDANT: I have now.

7 THE COURT: I have also been, unfortunately, exposed
8 through this job to seeing people who have had prolonged
9 exposure and use of methamphetamine, and it's my uneducated
10 assumption that prolonged use of methamphetamine develops
11 symptoms such as paranoia. Would you agree with that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And people who have prolonged use of -- who
14 engage in the prolonged use of methamphetamine seem to often be
15 armed. Would you agree with that?

16 THE DEFENDANT: Seem to be armed?

17 THE COURT: Seem to always have guns around. Whether
18 they use them or not, that just seems to be a common denominator
19 that I happen to, unfortunately, see.

20 THE DEFENDANT: The people I was around didn't.

21 THE COURT: The amphetamine that was located in your
22 apartment or house --

23 THE DEFENDANT: House.

24 THE COURT: -- in your house, it was located in your
25 bedroom?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: The handgun was located in a dresser drawer
3 in your bedroom?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: That's all I have. Anything further,
6 Mr. Lewis --

7 MR. LEWIS: Your Honor, the only thing --

8 THE COURT: -- of this witness? Any questions?

9 MR. LEWIS: Oh, no. Nothing further of this witness.

10 THE COURT: Any cross?

11 MS. MORRIS: No, Your Honor.

12 THE COURT: Ms. Dorsey, thank you. You may step down.

13 Any other witnesses or evidence or arguments in support
14 of your memorandum to the Court, assuming that we treat this as
15 an objection to the two-point --

16 MR. LEWIS: Only this, Your Honor. First of all,
17 there's no indication in the presentence report, other than the
18 fact that the enhancement was applied, that that gun was
19 possessed in connection with a drug offense. We would also
20 point out to the Court two things, and I won't belabor this.
21 Number one, she is -- I mean, there is also an account relating
22 to a drug user in possession of a weapon that is already taken
23 into account in these proceedings. Number two, application
24 number three of the guideline that -- under which the government
25 and probation office are traveling, 2D1.1(b)(1), states that

1 that adjustment should be applied if it is -- should not be
2 applied if it is clearly improbable that the weapon was
3 connected with the offense. I understand that places a burden
4 on the defendant to establish clear improbability, Your Honor.
5 The fact is that there's been no establishment of probability at
6 all, and we would ask the Court to remove the two-point
7 enhancement for possession of the weapon in connection with the
8 drug trafficking offense.

9 THE COURT: So it's your argument that based upon
10 application note 2D1.1(b)(1), even though it says that the
11 burden is to prove that it would be clearly improbable that the
12 weapon was connected with the offense, that the government must
13 first show that it was possessed in connection with a drug
14 trafficking offense before that burden would be placed upon the
15 defendant?

16 MR. LEWIS: Our position, Your Honor, is that there
17 should be some showing, because you've got something that's
18 basically a punitive application that -- and the rule of lenity
19 always, of course, favors the defendant.

20 THE COURT: Let me hear from probation. Is there
21 anything, Jo Ann, that you can add to what you've heard today?

22 PROBATION OFFICER: Your Honor, it's our position that
23 when a gun is as close as that gun was to the amount of drugs
24 that she had in her possession, it should be presented to the
25 Court. I have no other information other than her statement to

1 me about why the gun was there.

2 THE COURT: Should the counts be grouped together, or
3 are we looking at this as an enhancement for the possession of a
4 firearm or a handgun in connection with a drug trafficking
5 offense?

6 PROBATION OFFICER: These two counts, Counts --

7 THE COURT: 1 and 3.

8 PROBATION OFFICER: -- 1 and 3 were grouped together,
9 and we used 1 because it has a higher guideline, and that is an
10 enhancement for Count 1. If she --

11 THE COURT: Go ahead.

12 PROBATION OFFICER: If she had been convicted of Count
13 2, we could not have used that enhancement because the gun is
14 taken into consideration.

15 THE COURT: Right. Ms. Sellers, if Ms. Dorsey in this
16 case had only been charged with Count 1 --

17 PROBATION OFFICER: Yes, sir.

18 THE COURT: -- and the firearm had been found in her
19 possession at the same place that it was found, would her
20 recommended offense level have been any higher based upon her
21 having pled guilty only to Count 1 as opposed to this, what you
22 have called a grouping under Counts 1 and 3?

23 PROBATION OFFICER: No, sir, because I don't believe
24 she had any extra points added. I'm pretty sure that she
25 didn't. No.

1 THE COURT: Let me tell you, it's my understanding that
2 she -- even though you call them, quote, grouped, that her
3 offense level was calculated based upon the higher of the two
4 offenses, and that being offense one.

5 PROBATION OFFICER: Right.

6 THE COURT: And that the two points for possession of
7 the firearm in connection with the drug trafficking offense,
8 although it is an enhancement, and although you called it
9 grouping, from my view I don't really see there being a
10 distinguishing factor between those two -- It's a matter of
11 semantics, I guess, is what I'm trying to get across.

12 PROBATION OFFICER: If she had just been convicted of
13 Count 1, it would be the same. We would still add the two
14 points and not be any higher. If she had been convicted of
15 Count 2, then we could not have added those two points.

16 THE COURT: And I understand that, so we're not even
17 considering Count 2. But with the two counts that we are
18 considering, because Mr. Lewis has raised this as an
19 objection -- And I want to say for the record, the objection was
20 filed late, and I know that probation didn't get a chance to
21 review the objection. But because the objection was filed and
22 the argument that Mr. Lewis has made, would there be any
23 difference in the recommended offense level under the sentencing
24 guidelines because you have grouped the offenses in Counts 1 and
25 3 as opposed to using Count 3 only as an enhancement? Should

1 they be grouped, or does it make any difference? I don't see
2 that there practically is any difference between what you have
3 called grouping the offenses, because she's only been -- her
4 base offense level is calculated on the offense set forth in
5 offense one.

6 PROBATION OFFICER: That's correct. Maybe Ms. Caple
7 can explain this better than I can. She's looking.

8 PROBATION OFFICER: I'm understanding the argument that
9 the Court is making, but what has happened is you have two very
10 similar offenses. And because they're similar, under the United
11 States Guidelines they are grouping them into one group.

12 Say, for instance, she had not been convicted of Count
13 1, and 922(g) only with regard to 2K2.1. However, when we got
14 to the (b)(5) enhancement, we still would have gone back to
15 2D1.1, and she would have gotten still this same offense level
16 that we have here. But she is actually --

17 THE COURT: But my question is if she had only been
18 charged with the offense set out in offense one, possession with
19 intent to distribute the quantity of methamphetamine or
20 amphetamine that she has pled guilty to, assuming Counts 2 and
21 3 were never lodged against Ms. Dorsey, because the gun was
22 still found in the room, would the base offense level have still
23 been --

24 PROBATION OFFICER: It would have been 32 based on the
25 amount of drugs.

1 THE COURT: -- 32 as calculated?

2 PROBATION OFFICER: Yes, sir.

3 THE COURT: Even though you called it grouped, it still
4 would have been 32?

5 PROBATION OFFICER: Yes, sir.

6 THE COURT: And you would have still apprised the Court
7 of the enhancement for possession of a firearm in connection
8 with a drug trafficking offense --

9 PROBATION OFFICER: Yes, sir.

10 THE COURT: -- under 2D1.1(b)(1)?

11 PROBATION OFFICER: Exactly. Because it would be our
12 contention that it's not clearly improbable under her
13 circumstances.

14 THE COURT: Okay. Mr. Lewis, I'll hear any further
15 arguments that you have or witnesses that you have on this
16 position.

17 MR. LEWIS: Your Honor, we have no further arguments or
18 witnesses on this particular matter.

19 THE COURT: Anything by the United States?

20 MS. MORRIS: Your Honor, I would just point out to the
21 Court that Ms. Dorsey has just admitted she was selling drugs
22 from that house. She had large sums of money and large sums of
23 drugs in that house. As the Court is well aware, the Eleventh
24 Circuit has ruled that guns are tools of the trade for drug
25 dealers. And given the location of this gun in relation to the

1 drugs, I think that it is quite obvious that the gun was being
2 used to protect Ms. Dorsey, but as well as to protect the drugs
3 and the money. As the Court just pointed out more or less or
4 questioned Ms. Dorsey about, Ms. Dorsey did have people coming
5 to her house, and these people, while they may be on drugs or
6 just purchasing drugs for later use, are, quite frankly, more
7 dangerous than your average citizen walking on the streets just
8 because they're involved in the drug trade. So I think this
9 gun -- it is not clearly improbable that this gun was used in
10 connection with the drug trafficking.

11 I would also point out for the Court that in 2D1.1,
12 under application note three it uses as an example of a clearly
13 improbable gun an unloaded hunting rifle. This is a revolver
14 that was found next to the drugs. I mean, a hunting rifle,
15 unloaded, I can -- I think we all agree would be or could be
16 clearly improbable. But in this case, this is something that's
17 almost the opposite of that.

18 THE COURT: Any argument by the defense?

19 MR. LEWIS: Nothing further, Your Honor.

20 THE COURT: Here is the Court's findings of fact and
21 conclusions of law on this issue: First, I would find that
22 there is no distinguishable difference in the calculation of the
23 offense level because of the added Count 3 as opposed to your
24 original charge in Count 1 of possession with intent to
25 distribute the quantity of amphetamine or methamphetamine that

1 you have been charged with in Count 1, Ms. Dorsey.

2 Next, the Court finds that the government or the United
3 States does not have to show that you had any intent to use the
4 gun in any criminal activity. But I do find that the possession
5 of the gun by you in your bedroom, in the room where the drugs
6 were kept that you were admittedly selling, used to sell drugs
7 over a period of time, did embolden you by promoting, in your
8 words, your peace of mind of having security available for you
9 and your daughter while you resided in that home. Therefore, I
10 do find that the two-point enhancement for possession of a
11 firearm in connection with a drug trafficking offense should be
12 and is applied under section 2D1.1(b)(1) of the United States
13 Sentencing Guidelines.

14 With these findings of fact and conclusions of law, are
15 there any objections, any further objections that the defendant
16 has at this time?

17 MR. LEWIS: There are no objections, Your Honor.

18 THE COURT: Okay. Having made the Court's findings as
19 to the memorandum to the Court, as the Court has interpreted
20 that memorandum to contain objections to the two-point
21 enhancement for possession of a firearm in connection with a
22 drug trafficking offense, the Court adopts the factual
23 statements contained in the presentence report and the testimony
24 of Ms. Dorsey, with specific findings under the guidelines that
25 the offense level is 31, the criminal history category is I, the

1 guideline range is from 108 months to 135 months, the supervised
2 release period is from two to three years, and the fine range is
3 from \$15,000 to \$1 million.

4 Also before the Court is the United States' motion for
5 downward departure and certification of substantial assistance
6 pursuant to Section 5K1.1 of the United States Sentencing
7 Guidelines as set forth in document 37 in this case. I will
8 hear from the government as to the grounds on which the
9 government relies in its motion.

10 MS. MORRIS: Your Honor, upon consulting with defense
11 counsel, may we do this at side bar?

12 THE COURT: You may.

13 MS. MORRIS: Thank you.

14 (Bench conference as follows:)

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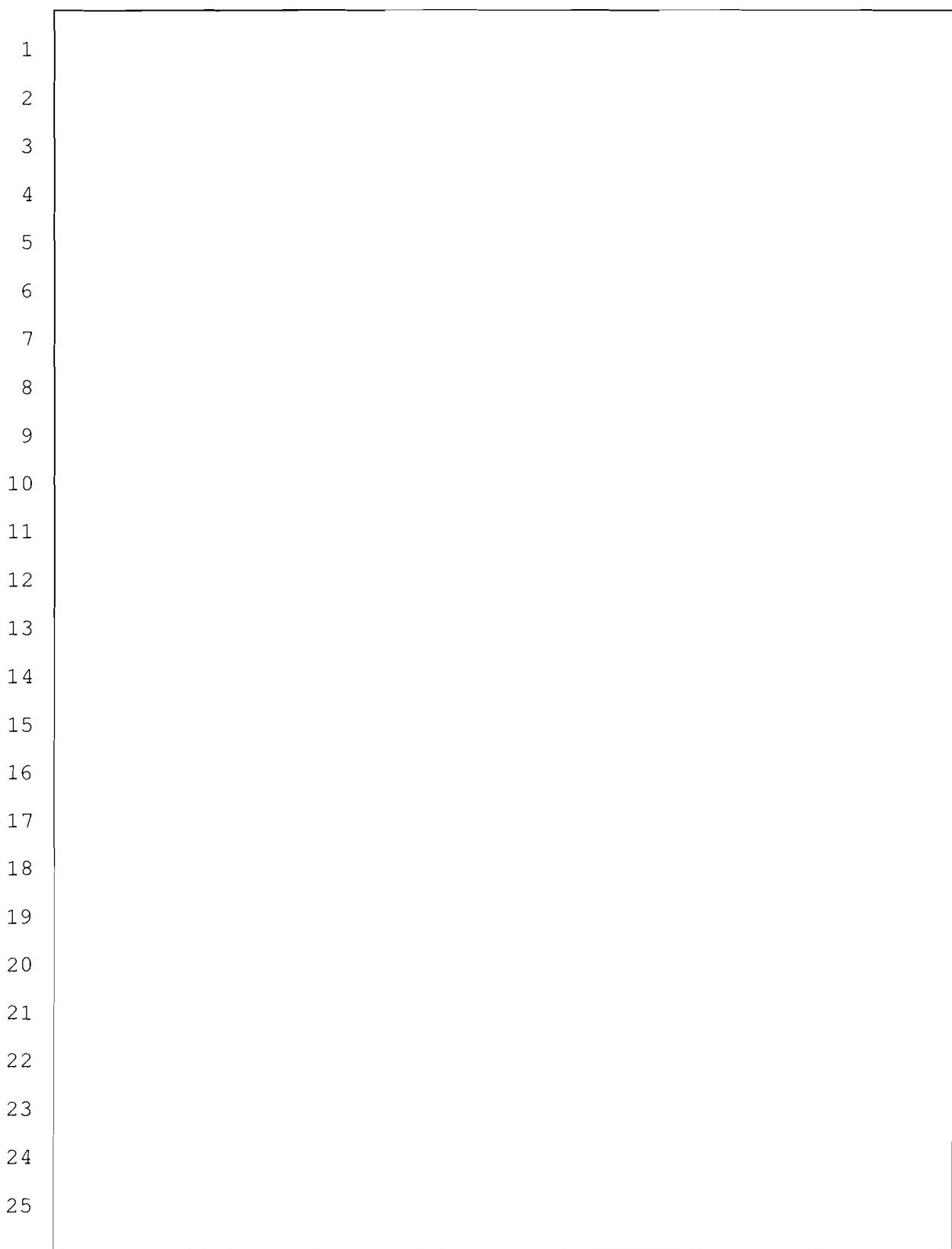
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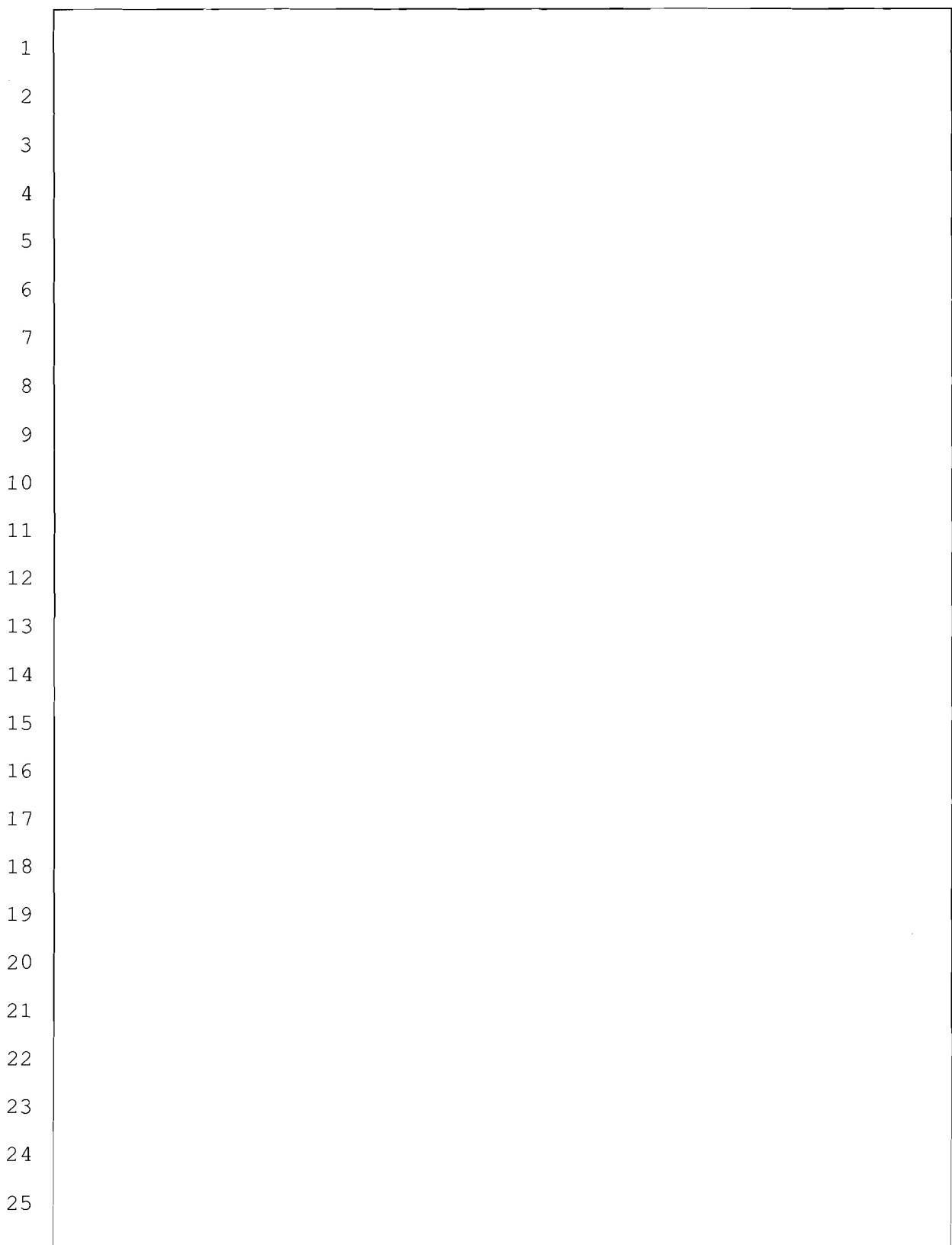
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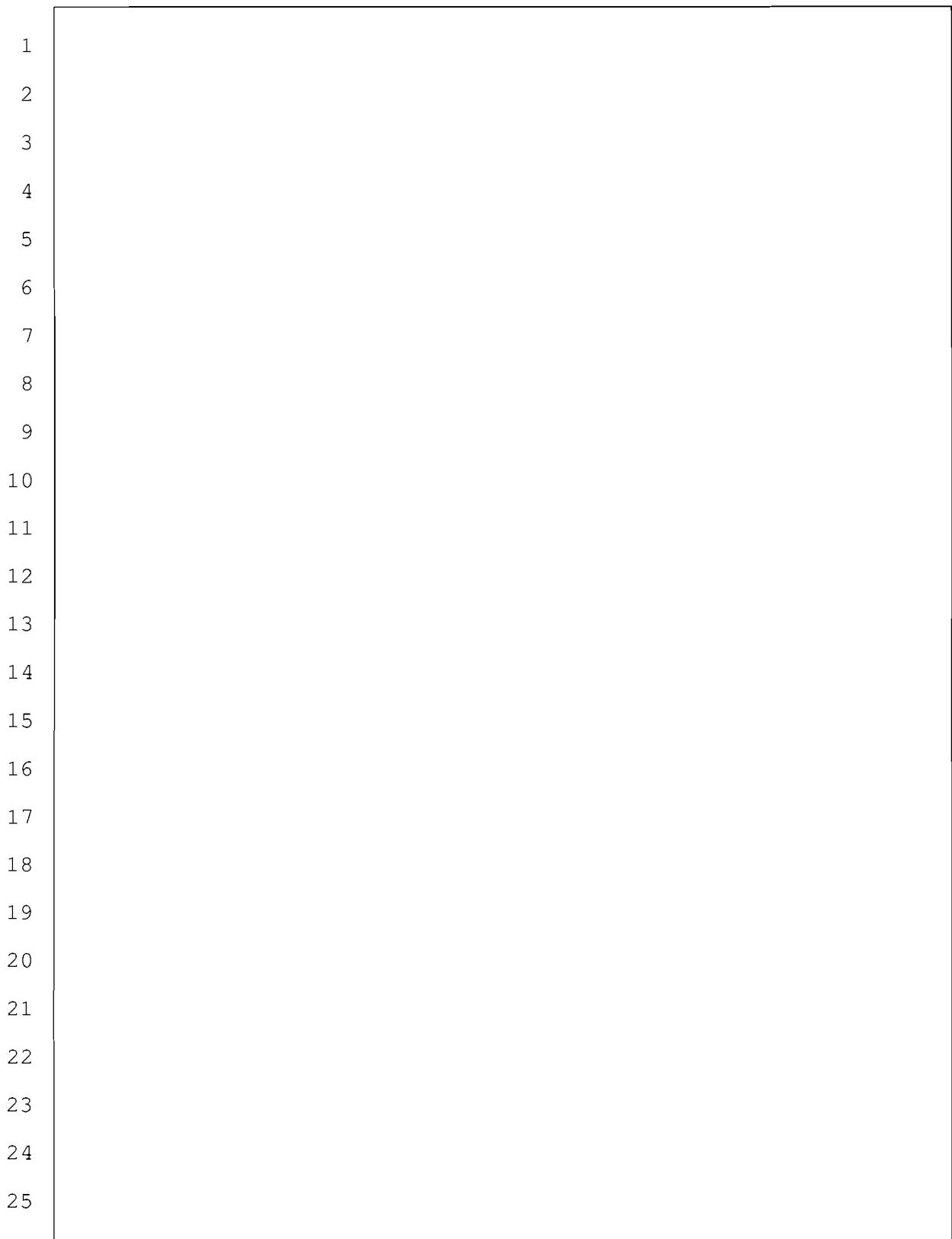
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1 THE COURT: Back on the record. As stated outside of
2 the presence of those who remain in the courtroom but in the
3 presence of counsel for the United States and the defendant and
4 defendant's counsel and after independent inquiry of this Court
5 and based upon the representations of the United States, the
6 government's motion for downward departure as outlined in
7 document 37 based upon the defendant's substantial assistance
8 should be and is granted. The basis for that motion as
9 represented by Ms. Morris on behalf of the United States will
10 remain under seal until further order of this Court. This
11 finding results in a reduction of the guideline level of 27
12 which, when combined with the criminal history category, creates
13 a guideline range of 70 months to 87 months and a fine range
14 from \$12,500 to \$1 million. An offense level of 27, which when
15 combined -- as I've stated. And that would be true for both
16 counts that you have pled guilty to in this case, Ms. Dorsey.

17 All right. Mr. Lewis, do either you or your client
18 have anything to say in mitigation or otherwise before the Court
19 pronounces sentence in this case?

20 MR. LEWIS: We do, Your Honor. May I call witnesses?

21 THE COURT: You may. And you may be seated if you have
22 witnesses that you wish to call, Ms. Dorsey.

23 MR. LEWIS: Your Honor, we would call Mr. Herman
24 Wesley.

25 THE COURT: Mr. Wesley.

1 (Witness was sworn.)

2 HERMAN WESLEY, the witness, having been duly sworn,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY MR. LEWIS:

6 Q. Would you tell us your name, please, and spell your last
7 name for us.

8 A. My name is Herman Wesley. W-E-S-L-E-Y.

9 Q. Mr. Wesley, how are you employed?

10 A. I'm the minister of the NorthPointe Church of Christ.

11 Q. And as minister of the NorthPointe Church of Christ, have
12 you come to know Jennifer Dorsey?

13 A. Yes, I have.

14 Q. How do you know Jennifer Dorsey?

15 A. Jennifer became a member of our congregation about two years
16 ago.

17 Q. And how would you describe her level of activity in your
18 congregation?

19 A. She's one of our most active members. Very dedicated,
20 committed, and she's been a consistent member in her actions
21 with our young people, in her actions with our community, and in
22 general church activities since she has been part of our
23 congregation.

24 Q. How has her interaction with other people been in terms of
25 positive, negative, what?

1 A. It's been very positive. Since Jennifer came to be a member
2 of our congregation, she has been consistently involved in
3 sharing good advice with our young people, just being a good
4 supporter of the ministry, and making herself available for
5 everything that we do. She's just had a very positive impact on
6 everybody that she has met along with her daughter.

7 Q. Is your church better off for having her?

8 A. Oh, yes, sir. We're better off for having her, without a
9 doubt.

10 Q. I have no further questions of this witness, thank you.

11 THE COURT: Cross?

12 MS. MORRIS: No, Your Honor.

13 THE COURT: Reverend Wesley, you may step down.

14 THE WITNESS: Thank you.

15 THE COURT: Call your next witness.

16 MR. LEWIS: Cabott Stough.

17 CABOTT STOUGH, the witness, having been duly sworn,
18 testified as follows:

19 (Witness was sworn.)

20 DIRECT EXAMINATION

21 BY MR. LEWIS:

22 Q. What's your name, please, sir?

23 A. Cabott Stough. S-T-O-U-G-H.

24 Q. Okay. Mr. Stough, what do you do for a living?

25 A. My son and I own Swanner Transfer and Storage Company.

1 Q. And what is Swanner Transfer and Storage Company?

2 A. We're the Beacon Vanline Service, moving company.

3 Q. Do you have any involvement with military relocations at

4 all?

5 A. We have a lot of involvement with the military relocations.

6 Q. In connection with your employment, the business you own,

7 have you come to know Jennifer Dorsey?

8 A. I have.

9 Q. How do you know Jennifer?

10 A. She works for us. She works in our operations department

11 and our sales department.

12 Q. And what does she do?

13 A. Well, she goes out and make sales calls, she goes out and

14 checks on jobs that are being done during that day, and she just

15 kind of works in those areas of the business, operations end and

16 sales end of the business.

17 Q. How important has she been during her employment to your

18 business?

19 A. She's been very important; been an excellent employee.

20 Q. Have you had any trouble at all with Jennifer?

21 A. None whatsoever.

22 Q. Did Jennifer at some point tell you that she was going to

23 have to go to prison?

24 A. She did.

25 Q. Tell me about that conversation.

1 A. Well, she was concerned about the imposition that it was
2 going to place on the company with us having to find someone
3 else and train them for her job and the other employees having
4 to take up their job -- her job along with the job they've
5 already got there.

6 Q. So her concern with going to prison was for other people
7 around?

8 A. Exactly.

9 Q. If it came to that, would you have her back?

10 A. I would.

11 Q. Thank you.

12 MR. LEWIS: No further questions of this witness, Your
13 Honor.

14 THE COURT: Cross?

15 MS. MORRIS: No, Your Honor.

16 THE COURT: Thank you, Mr. Stough.

17 THE WITNESS: Thank you.

18 MR. LEWIS: We would call Glenn Winkler.

19 (Witness was sworn.)

20 GLEN WINKLER, the witness, having been duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. LEWIS:

24 Q. Tell the Judge your name, please.

25 A. My name is Glen Winkler.

1 Q. How do you spell your last name?

2 A. W-I-N-K-L-E-R.

3 Q. Mr. Winkler, do you have any special education or training?

4 A. Yes, sir. I am -- I have a master's degree in counseling.

5 I am a substance abuse counselor in the intensive outpatient

6 program at Chemical Addictions Program here in Montgomery. I

7 have been a substance abuse counselor now for six years.

8 Q. About how many people would you say you've counseled during

9 your career as a substance abuse counselor?

10 A. Hundreds.

11 Q. Okay.

12 A. If not in the thousands by now. I really would -- I'd like

13 to know that.

14 Q. Okay. The Chemical Addictions Program, is that what we call

15 CAPS?

16 A. Yes. Yes.

17 Q. Okay. And that's locally based in Montgomery?

18 A. Yes, sir.

19 Q. In connection with your employment there, have you come to

20 know Jennifer Dorsey?

21 A. Yes. Ms. Dorsey was my client from the latter part of 2005

22 to the early part of 2006, I believe. I would need to look at,

23 you know, the chart for the specific dates, but, yes, she was my

24 client and she successfully completed the program.

25 Q. Okay. You're sure it was 2005 to 2006?

1 A. No, I'm not, actually.

2 Q. Okay. All right. For how long was she in your program?

3 A. I would say approximately 30 weeks.

4 Q. Okay. And is that a normal length of time for a person to
5 remain in your program?

6 A. Uh-huh (positive response). I'm not -- I'm not entirely
7 sure like the specific number of weeks. She -- she was never
8 absent the entire time she was there. There's a very good
9 chance I may have advanced her early based on her progress and
10 the quality of the support system she had developed.

11 Q. Okay. Well, let's talk about that just a little bit. Did
12 Jennifer tell you that she was charged with a drug trafficking
13 offense?

14 A. Yes.

15 Q. All right. Did she tell you that's why she was there?

16 A. Well, more or less.

17 Q. Okay.

18 A. I mean, she -- that's what brought her to treatment
19 initially, though I will say in my career, Jennifer is very
20 easily in the top five percent of all my clients that I've ever
21 worked with. Much of my work with her was basically reinforcing
22 changes that she had already made by becoming a member of
23 Narcotics Anonymous and working the 12-step program and really
24 opening herself up to the suggestions of Narcotics Anonymous and
25 myself as her counselor, and during that time she showed

1 exceptional progress.

2 Q. You see her sitting right there today?

3 A. Yes.

4 Q. Is that Jennifer?

5 A. That's Jennifer.

6 Q. All right.

7 MR. LEWIS: Let the record reflect he's pointing to the
8 defendant in this case.

9 Q. What did she look like when she first came to you?

10 A. She was working hard on her recovery when she got there.

11 She was still getting her footing in her recovery and still
12 learning how to set healthy boundaries in her personal
13 relationships, reestablishing her credibility as a mother, as a
14 citizen, as -- you know, changing her lifestyle from the way it
15 was in her addiction to the way it is now.

16 Q. And is her lifestyle changed?

17 A. Yes.

18 Q. Have you had contact with her since she finished your
19 program?

20 A. I have. She would call me every now and then or stop by
21 just to say hello and let me know how she was doing.

22 Q. Do all of your clients do that?

23 A. No.

24 Q. Okay. Have you had any opportunity to observe her
25 interaction with other people during her therapy and recovery?

1 A. Yes. We -- much of our program is based on group therapy,
2 group counseling, and Jennifer -- Jennifer always had positive
3 feedback. She would reach out to other clients who were in
4 crisis. She would share openly about herself. She always
5 accepted responsibility for, you know, the consequences of her
6 choices and used that knowledge to try to help others.

7 Q. Was she a positive or a negative influence on others?

8 A. Oh, extraordinarily positive.

9 Q. You said she was in the, say, top five percent of all the
10 clients you've had in treatment?

11 A. Uh-huh. (positive response.)

12 Q. If you had to make a bet, what are the odds that Jennifer
13 Dorsey as you have come to know her will be drug free five, ten
14 years from now?

15 A. In my professional opinion, 95 percent. I would rightly --
16 I mean, if I had to -- if I had to bet my life on the continued
17 recovery of any one of my clients, Jennifer is one I would
18 consider placing my own life on. I trust her that much. I
19 believe in the sincerity of her recovery and her program, and
20 working with her has been an honor. You know, she really -- I
21 believe she is a different person today than the person she was
22 when all of this started. I really do.

23 MR. LEWIS: I have nothing further of this witness,
24 Your Honor.

25 THE COURT: Cross?

1 MS. MORRIS: No, Your Honor.

2 THE COURT: Is it Mr. Winkler?

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you, Mr. Winkler. You may step down.

5 MR. LEWIS: Your Honor, I have no further witnesses. I
6 want to commend to the Court a memorandum having to do with the
7 various factors, and I won't go through them here because that
8 memorandum is already on the record. But the Court has said in
9 every sentencing this morning and has acknowledged that the
10 sentencing guidelines are advisory only. And in fact, after
11 Booker, they are advisory only. The problem has been -- and I'm
12 certainly not including this Court in that -- in my experience
13 judges have been applying the guidelines with more stentorian
14 diligence than ever before; that the guidelines have now become
15 even more binding.

16 I would offer this, Your Honor. That I have
17 represented lots of defendants in this courthouse for the last
18 15 years. I have never seen one more deserving of a downward
19 departure, substantial downward departure, than Jennifer
20 Dorsey.

21 When she first came to my office -- and I was appointed
22 to this case late. But when she first came to my office, she
23 was a wreck. She looked different. Her eyes were dead. She
24 was an addict, and she got into the drug business to support
25 that addiction. She was disheveled. Her hair was stringy. She

1 was an addict.

2 I have had the privilege of dealing with Jennifer --
3 and I don't say this about a lot of clients, Judge, but I have
4 had the privilege of dealing with Jennifer now for months. I
5 have seen the change that her recovery has wrought. I have seen
6 light come back into her eyes. I have seen a pride in her
7 appearance. I have seen Jennifer Dorsey become a productive
8 member of society.

9 She knows, Judge, that she's got to pay the price. She
10 understands that. And I think Ms. Morris will tell you that she
11 has accepted responsibility. I would say to you that she has
12 undergone a super acceptance of responsibility and extraordinary
13 efforts at rehabilitation. The Court knows, because the Court
14 has experience how hard it is to get over a methamphetamine
15 addiction. And you never quite quit. This woman has made an
16 unprecedented, in my experience, recovery. That's one of the
17 factors this Court can consider, among many, especially after
18 Coon. And I urge this Court to consider her relationship to her
19 church, to her counselor, her recovery, her commitment to
20 herself in encouraging this Court to depart downward from the
21 recommended sentence.

22 I appreciate the Court's indulgence.

23 THE COURT: Ms. Morris?

24 MS. MORRIS: I would just say for the Court that it
25 does seem as though that this defendant has at least attempted

1 to turn her life around and is making great steps into doing
2 so. Because of that, there is a recommendation from probation
3 that she receive the low end of the guidelines, and I think that
4 that adequately takes into consideration her steps towards
5 rehabilitation. I can't say anything less than I applaud her.
6 I will say, I think methamphetamine is one of the hardest
7 addictions to beat. And given the fact that she has come this
8 far, that is a fantastic journey. But at the same time, the low
9 end of the guideline range does take that into effect.

10 THE COURT: Please stand, Ms. Dorsey. Ms. Dorsey, the
11 sentence will now be stated, but you'll have a final chance to
12 make legal objections before the sentence is imposed. I hope
13 that you'll listen to all of what I have to say before you
14 react, because some of what I have to say is based in part on
15 the progress that you have made in your life. You apparently
16 have the support of a great number of people here who, with the
17 problems that you have suffered in your life, you're going to
18 need as a support network. You have demonstrated to this Court
19 that you have the ability to continue your progress towards
20 being a good mother, a good employee, a good church member, and
21 a good, contributing member of society, as has been reflected by
22 these witnesses this morning, by the memorandum that your
23 attorney has filed, and the letters of recommendation, all of
24 which I have read. However, based upon the advisory guideline
25 range and the applicable statutory factors, it is the judgment

1 of this Court that you, Jennifer Dorsey, be committed to the
2 custody of the Federal Bureau of Prisons to be imprisoned for a
3 term of 70 months.

4 Listen to what I have to say. The Court recommends
5 that you be designated to a facility where intensive residential
6 substance abuse treatment is available. And I hope your
7 attorney will discuss the benefits that that will allow you
8 while in the custody of the Bureau of Prisons.

9 Based upon your inability to pay, the Court waives the
10 imposition of a fine. However, you shall pay to the United
11 States District Court clerk a special assessment fee of \$200,
12 which is due immediately.

13 The Court finds that there is no identifiable victim
14 who incurred a financial loss as a result of this offense.

15 Upon release from imprisonment, you shall be placed on
16 supervised release for a term of three years. This term
17 consists of three years on each of Counts 1 and 3, all such
18 terms to run concurrently.

19 Within 72 hours of release from custody, you shall
20 report to the probation office in the district to which you are
21 released. While on supervised release, you shall comply with
22 the mandatory and standard conditions of supervised release on
23 file with this court.

24 The Court also orders the following special
25 conditions: You shall participate in drug testing and/or

1 treatment. You shall contribute to the cost of any treatment
2 based upon your ability to pay and the availability of
3 third-party payments. You shall submit to a search of your
4 person, residence, office, or vehicle pursuant to the search
5 policy of this Court. You shall cooperate in the collection of
6 DNA.

7 The Court finds that the sentence that has been stated
8 in this case is a reasonable sentence and is imposed to reflect
9 the seriousness of the offense and to promote respect for the
10 law and to provide just punishment for the offense, to afford
11 adequate deterrence to criminal conduct, and to protect the
12 public from any further crimes committed by you, Ms. Dorsey, and
13 to provide you, Ms. Dorsey, with the needed educational or
14 vocational training, medical care, or other correctional
15 treatment in the most effective manner available to this Court
16 and to the Bureau of Prisons. The Court further finds that any
17 lesser sentence would be insufficient to accomplish the purposes
18 set forth in 18 United States Code Section 3553(a)(2).

19 Also the Court finds that the sentence is reasonable
20 based upon the binding plea agreement that you entered with the
21 United States in this case and is reasonable because of the
22 effort that you have exhibited thus far in assisting yourself
23 through the unobjectionable representations by the United States
24 of your assistance, which qualified you for a substantial
25 assistance departure under Section 5K1.1. I say this to remind

1 you, as I will cover later, you still have the ability to assist
2 yourself and the United States and get the benefits that may be
3 afforded you through any future motion for a reduction in your
4 sentence under a Rule 35 reduction in sentence.

5 Are there any objections to the sentence or to the
6 manner in which the Court pronounced it? For example, do you
7 have any objections to the Court's ultimate findings of fact or
8 conclusions of law?

9 MR. LEWIS: No objections other than those already
10 stated to the enhancement.

11 THE COURT: Any objections by the United States?

12 MS. MORRIS: No, Your Honor.

13 THE COURT: Ms. Dorsey, the sentence is ordered imposed
14 as stated. The Court will now address your rights of appeal.

15 You have a right of appeal. In order for your appeal
16 to be timely, you may need to file your notice of appeal as soon
17 as ten days from the Court's entry of written judgment in this
18 case. If you cannot afford the cost of an appeal, you may
19 need -- you may petition the Court for leave to appeal in forma
20 pauperis.

21 Pursuant to the plea agreement reached between yourself
22 and the United States, you have waived some or all of your
23 rights to appeal the sentence in this case. Such waivers are
24 generally enforceable, but if you believe that your waiver is
25 not enforceable, you may present that theory to the appropriate

1 appellate court. As you have heard me repeat earlier, I'm not
2 encouraging you to appeal or not to appeal. I'm merely
3 informing you of your rights regarding appeal, Ms. Dorsey.

4 Do you have any questions regarding those rights?

5 THE DEFENDANT: No, sir.

6 THE COURT: I have before me a detention and release
7 order pending voluntary surrender, part of which requires if I
8 were to consider that you be allowed the opportunity to
9 voluntary surrender that there be a finding of exceptional
10 reasons why your detention would not be appropriate at this
11 time. I will allow the government and your attorney,
12 Ms. Dorsey, to proffer that information which I have heard at
13 side bar and have ordered placed under seal. Are there any
14 other reasons that the Court needs to consider as exceptional
15 reasons in making a determination as to your ability to
16 voluntary surrender as opposed to order that you be detained at
17 this time?

18 MR. LEWIS: Your Honor, from the defense, we would
19 proffer the reasons that the Court has already heard. We would
20 also -- and we believe that those are -- those do constitute
21 exceptional circumstances. We would further point out for the
22 record Ms. Dorsey has shown up for every proceeding, every
23 meeting, every consultation, every test, everything that anybody
24 ever wanted her to do, knowing that she was facing a long prison
25 sentence; and second of all, that she is free of any of those

1 elements of her personal life that might have once created a
2 danger to the community. We feel that there's no flight risk,
3 no danger to the community, and exceptional circumstances, so we
4 would ask that she be allowed to remain free pending voluntary
5 surrender.

6 THE COURT: For the record, Ms. Dorsey, you have pled
7 guilty to an offense for which the maximum term of imprisonment
8 of ten years or more is prescribed under the Controlled
9 Substances Act. Because of that, the Court is required to find
10 exceptional reasons why your detention today would not be
11 appropriate. Anything that the United States wishes to add
12 other than what has been represented at side bar?

13 MS. MORRIS: No, Your Honor.

14 THE COURT: Ms. Dorsey, the Court has considered your
15 progress thus far and has considered the evidence presented at
16 side bar in support of your request for voluntary surrender. I
17 would add as part of my order for your detention that you be
18 placed in custody with the Bureau of Prisons at a facility as
19 near to Montgomery as you can be reasonably placed to accomplish
20 the other requirements imposed upon you in this hearing.

21 The Court finds that there are exceptional reasons why
22 your detention would not be appropriate on this date and that
23 you are not likely to flee or pose a danger to the safety of any
24 other person or the community pending the imposition of
25 sentence. It is therefore ordered that you, Ms. Dorsey, be

1 released and continued under the same conditions imposed by the
2 United States Magistrate Judge on August 24th, 2005. You shall
3 surrender at the institution designated by the Federal Bureau of
4 Prisons on or before two p.m. on Monday, November 27th, 2006.
5 This will give you an opportunity to complete those things that
6 were represented to me at side bar, and I would encourage the
7 United States to have those requirements completed to give
8 Ms. Dorsey an opportunity at a reasonable expectation of any
9 future benefit that she might otherwise be entitled.

10 Ms. Dorsey, I applaud you for the progress that you've
11 made. I would say as a means of encouragement that you have
12 made remarkable progress, and I hope that the consequences that
13 you have to pay for your past acts do not reflect adversely upon
14 the progress that you have made and presented yourself before
15 this Court today. I wish you the best of luck. You've got a
16 lot of life left to live, and I hope that you can be productive
17 in whatever choices that you make after this time in your life
18 is behind you.

19 Anything else by the United States?

20 MS. MORRIS: At this time the government would move to
21 dismiss Count 2 from the indictment.

22 THE COURT: Without objection, Count 2 is dismissed and
23 the motion is granted. Anything else?

24 MS. MORRIS: Nothing from the government, Your Honor.

25 THE COURT: Anything by the defense?

1 MR. LEWIS: Nothing, Your Honor.

2 THE COURT: There is a forfeiture obligation in the
3 indictment.

4 MS. MORRIS: Then we are moving to forfeit the gun.

5 MR. LEWIS: And we have no objection to that, Your
6 Honor.

7 THE COURT: I'd ask the United States prepare the
8 appropriate documentation without objection from the defendant
9 to consummate the forfeiture of the handgun that was recovered
10 as part of the search of Ms. Dorsey's residence. And if could
11 you do so within seven days.

12 MS. MORRIS: No problem. We'll get the preliminary
13 order of forfeiture over to the Court immediately.

14 THE COURT: I'll incorporate that in my final order in
15 this case.

16 THE CLERK: The preliminary order has already been
17 filed.

18 THE COURT: Okay. This will be made a final order of
19 forfeiture.

20 MS. MORRIS: We'll get the final order, then. Thank
21 you.

22 THE COURT: That will be incorporated in this order.
23 If you'll see probation, Ms. Dorsey, before you leave today. I
24 wish you the best of luck. Unless there's something else, Court
25 will be in recess.

(Proceedings concluded at 12:30 p.m.)

* * * * * * * * * *

TRANSCRIBER'S CERTIFICATE

I certify that the foregoing is a true and correct transcript, to the best of my ability, from the stenographic notes provided to me by Official Court Reporter Risa L. Entrekin.

This 10th day of December 2007.

/s/ Patricia G. Starkie
Registered Diplomatic Reporter
Certified Realtime Reporter
Official Court Reporter

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

UNITED STATES OF AMERICA)

vs.

2007 OCT 22) P 2:49

Civil Case No. 2:07-cv-831-MEF-SRW

JENNIFER DORSEY)

AFFIDAVIT OF COUNSEL

COMES NOW Jay Lewis, appointed attorney for defendant Jennifer Dorsey ("Dorsey") and would show the Court as follows:

Dorsey was originally represented in criminal case number 2:05-cr-208-MEF-SRW by Christine Freeman, the Federal Defender. Due to the discovery of a conflict, Ms. Freeman withdrew from representation, and the Court appointed the undersigned counsel.

Counsel's records show that he first met with Dorsey on 9/07/05 and represented her during the proceedings against her through her sentencing on 9/11/06.

During the year that charges were pending against Dorsey, counsel met with her or conversed with her by telephone a minimum of eighteen times. This represents the number of logged contacts; there were others that were not sufficiently significant for counsel to enter into his timekeeping program.

Counsel kept Dorsey fully apprised at all times of the progress of her case and negotiations between him and the Assistant US Attorney, Clark Morris.

In the end, Morris and the undersigned reached a plea agreement which was filed with the Court on or about 5/25/06. Pursuant to that agreement, Dorsey pleaded guilty to Counts 1 and 3 of the indictment, admitting that she possessed with intent to distribute approximately 373 grams of amphetamine, and that she possessed a firearm while being an unlawful user of or addicted to

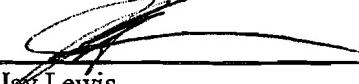
a controlled substance. On both 5/23/06 and 5/25/06, counsel conferred with Dorsey about the plea agreement and the provisions thereof. Dorsey indicated that she understood the terms of the agreement.

The plea agreement contained a section headed, "Defendant Waives Appeal and Collateral Attack." Dorsey verbally acknowledged her understanding that she could appeal if her counsel had been ineffective or if the prosecution had engaged in misconduct; otherwise, she could not appeal or challenge her sentence in a post-conviction proceeding. On 5/25/06, Dorsey signed the plea agreement, acknowledging in writing her understanding of the waiver of appeal and collateral attack, and acknowledging her satisfaction with the advice and representation of the undersigned.

Counsel has no independent recollection of whether or not he informed Dorsey that she had ten days within which to appeal, but such advice would be superfluous since Dorsey had waived her right to appeal. Nor did Dorsey ever indicate that she wanted to appeal.

Counsel is satisfied that he negotiated the best possible outcome for Dorsey; she received full credit for acceptance of responsibility and four levels down for substantial assistance to the government. Counsel submits that he provided competent and effective representation to Dorsey.

RESPECTFULLY SUBMITTED, this 22nd day of October, 2007.



Jay Lewis
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J-Lewis@JayLewisLaw.com
ASB-2014-E66J

SWORN TO and SUBSCRIBED before me this 22nd day of October, 2007.

Jay Lewis Simon
NOTARY PUBLIC, Alabama at Large
My commission expires 9/19/11

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2006, I served the foregoing on the following by first class mail, properly addressed and postage prepaid, or I electronically filed with the Clerk of the Court the foregoing document through the CM/ECF system, which will send notification of such filing to the following individuals:

A. Clark Morris, Esq.
John T. Harmon, Esq.

Jennifer Dorsey
#11759-002
Marianna FPC
P.O. Box 7006
Marianna, FL 32447-7006



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